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IN THE

SUPREME COURT OF THE UNITED STATES.

Docket No. [redacted] 83

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

vs.

ODELL JONES et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

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INDEX.

	Page
Opinions below	1
Jurisdiction of this court	2
Questions presented	2
Statement of the case	3
Statute involved	6
Reasons for granting the writ	6
Appendix A—Opinion of the Court of Appeals	13
Appendix B—Findings of fact, conclusions of law and judgment	21

Cases Cited.

Brotherhood v. Howard, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283 ..... 2, 3, 6

Brotherhood v. Mitchell, 190 F. 2d 308 ..... 2, 3, 6

Graham v. Brotherhood, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22 ..... 2, 3, 6

Rolax v. Atlantic Coast Line Railroad Co., 186 F. 2d 473 ..... 2, 3, 6

Steele v. L. & N. Railroad Company, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173 ..... 2, 6, 8, 12

Tunstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187 ..... 2, 3, 6

Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, 57 S. C. R. 592 ..... 9, 12

Statutes Cited.

28 U. S. C., Sec. 1254 (1) (62 Stat. 928) 2

28 U. S. C. A., Secs. 1337, 2201 and 2202 3

45 U. S. C. A., Sec. 151 et seq. 2, 3, 6, 9

45 U. S. C. A., Sec. 152 9

45 U. S. C. A., Sec. 154 et seq. 2

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To the United States Court of Appeals for the Fifth Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, the Central of Georgia Railway Company, prays for the issuance of a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit (Brown, J., dissenting), affirming the judgment of the District Court of the Northern District of Alabama.

OPINIONS BELOW.

The opinion of the Court of Appeals is set out as Appendix A (pages 13 to 20, R. 408-415). The decree of the District Court for the Northern District of Alabama is set out as Appendix B (pages 21 to 36, R. 362-380).

JURISDICTION OF THIS COURT.

The opinion and judgment of the Court of Appeals are dated January 31, 1956. A petition for rehearing was filed by this petitioner within the time permitted by law and was denied by an order dated March 9. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1) (62 Stat. 928).

QUESTIONS PRESENTED.

Petitioner is an interstate common carrier by rail, its lines being in the states of Alabama, Georgia and Tennessee. As such, it is subject to the terms and provisions of the Railway Labor Act, 45 U. S. C. A. 154 et sequitur. The per curiam opinion stated that the substantive question of law pertinent to this case is established by the cases of Steele v. L. & N. Railroad Company, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; Rolax v. Atlantic Coast Line Railroad Co., 186 F. 2d 473; Brotherhood v. Mitchell, 190 F. 2d 308.

The dissenting opinion of Brown, J., stated that there is a vital distinction between the case here presented and the cases cited in the per curiam opinion. Circuit Judge Brown is correct if any of the following questions can be answered in the negative:

1. Does the Railway Labor Act, 45 U. S. C. A. 151 et seq., impose a legal duty on a railroad company to bargain in behalf of a minority group of employees for whom the Railway Labor Act has made a labor organization exclusive bargaining representative?

2. Do the cases of Steele v. L. & N. Railroad Company, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; Tunstall v.

Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; Rolax v. Atlantic Coast Line Railroad Co., 186 F. 2d 473; Brotherhood v. Mitchell, 190 F. 2d 308, constitute authority for the courts to write an employment contract for a railroad and a labor organization, both of whom are subject to the Railway Labor Act, containing provisions to which neither has agreed?

3. Can an employer, who by the terms of the Railway Labor Act is required to negotiate exclusively with a railroad Brotherhood, be assessed damages for the failure of the Brotherhood to perform properly its statutory obligations?

4. Does Federal law authorize the courts to force an employer, who is subject to the Railway Labor Act, to hire persons of a given race for given jobs?

STATEMENT OF THE CASE.

This suit is a declaratory judgment action instituted by the respondents here, namely, Odell Jones and others and all negro brakemen employed by the Central of Georgia Railway Company. The defendants are the Central of Georgia Railway Company, here the petitioner, and the Brotherhood of Railroad Trainmen. The action is based on Title 28, U. S. C. A., Sections 1337, 2201 and 2202, and Title 45, Section 151 et seq. as amended, commonly known as the Railway Labor Act.

The relief sought by the plaintiffs is a statement of their rights and others similarly situated as may exist under the Railway Labor Act and the Employment Contract negotiated by the Brotherhood of Railroad Trainmen and the Central of Georgia Railway Company. The specific relief sought is an adjudication that the defendants have acted

in concert in committing certain unlawful and discriminatory practices against them; that an injunction issue against a continuance of those practices; and that the defendants be restored, advanced and assigned to job assignments to which their seniority entitles them.

The answer of the Central of Georgia Railway Company denied that it had been guilty of unlawful, secret or conspiratorial agreements, or that it had entered into any agreement which deprived the plaintiffs of seniority rights which they might have acquired (R. 46). It further set forth that the contractual conditions of employment have not been changed since the year 1919.

The answer of the Brotherhood of Railroad Trainmen set forth, in substance, a denial of the charges brought against it.

The District Court before whom this case was tried rendered an oral opinion, following which, findings of fact, conclusions of law and judgment were entered against the Central of Georgia Railway Company and the Brotherhood of Railroad Trainmen. In substance, the court found the contract discriminatory and enjoined the Railroad and the Brotherhood from further discriminatory practices and assessed damages against both, the amount to be determined by a special master at a later date limited to a period of one year prior to the commencement of the action (R. 358, 362).

Further, as to the Central of Georgia Railway Company, the petitioner here, the District Court ordered:

> "That defendant Railway cease and desist from refusing and failing so long as white trainmen are given seniority based upon continuous service (1) to grant plaintiffs' seniority rights, assignments and opportunities to train for jobs (including baggagemen, flagmen and lister switchmen, or 'booking and flagging,' as

used in the findings herein) as white trainmen are given, based upon continuous service; (2) to assign plaintiffs to assignments and jobs (including baggagemen, flagmen and lister switchmen, or 'booking and flagging,' as used in the findings herein) and to permit them to train therefor to which their seniority as trainmen based upon continuous service entitles each of them" (R. 378-379).

The Court of Appeals by a per curiam opinion affirmed the decision of the District Court, Brown, J., dissenting as to applicability of the decree to this petitioner (R. 408-415). This petitioner, but not the Brotherhood, filed a petition for rehearing, which was denied (R. 426), again with Brown, J., dissenting.

The testimony directly applicable to the issues at hand is largely uncontradicted. All of the plaintiffs who testified are colored employees of the Central of Georgia Railway Company. They were originally employed either as brakemen or switchmen and each plaintiff who testified was still employed in that same category at the time his testimony was given. A brakeman and a switchman perform substantially the same duties, the difference being that a brakeman is employed in road service and a switchman in what is known as yard service.

The contract of employment between the Appellant Brotherhood and the Appellant Railway Company was originally executed in 1919 and contains the following provisions:

"Article 26 (a). When train or yard forces are reduced, the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggageman, or switchman, except

that negroes are not to be used as conductors, flagmen, baggagemen or yard conductors" (R. 263).

Each of the plaintiffs and each of the others similarly situated were employed subsequent to that date and the same provision has been incorporated in each successive contract executed by the parties.

At no time has this petitioner entered into a contract of employment giving the plaintiffs jobs or seniority rights in the positions of baggagemen and flagmen as set out in the District Court's decree (R. 378-379).

STATUTE INVOLVED.

The statute involved in this case is the Railway Labor Act, 45 U. S. C. A. 151 et seq.

REASONS FOR GRANTING THE WRIT.

The majority opinion of the Court of Appeals holds that the cases of Steele v. L. & N. Railroad Company, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; Rolax v. Atlantic Coast Line Railroad Co., 186 F. 2d 473; Brotherhood v. Mitchell, 190 F. 2d 308, give the courts authority to write an employment contract incorporating provisions to which neither party has agreed. This holding by the Court is in conflict with the policy of Congress in its enactment of the Railway Labor Act which specifically gives complete and exclusive bargaining rights to the railroad Brotherhoods.

The above interpretation of the effect of the majority opinion is confined by the remarks of Circuit Judge Brown, as follows (R. 413, 414):

"It is, first, of course, a complete by-pass of the whole process of the quasi-voluntary bargaining-mediation mechanism of the Railway Labor Act. Both Brotherhood and employer are left out. The District Judge, as a chancellor, acquires a power to do what no Mediator, Adjustment Board or Emergency Fact Finder is empowered to do—force a labor contract. Indeed, he does it with no semblance of negotiation or mediation—he does it in spite of; he does it over the protest of all but one segment.

"It is to infuse with adequate effectiveness by a judicial decree a policy which Congress has repeatedly declined to create by legislation. It is to force an employer to hire persons of a given race for given jobs. That is the aim of proposed Fair Employment Practice Code. Until it is enacted, it is not for government through its judicial arm, or otherwise, to say to this employer: these must be hired. See, Mr. Justice Minton's dissent in Brotherhood of Railroad Trainmen v. Howard, 343 U. S. 768, 775, 778, 96 L. Ed. 1283, 1289, 1291.

"As far as Goverment can go, is to release the victims of this discriminatory contract from its restraining burden and impose on their vicarious agent the heavy duty of energetic bargaining for all, or even more than what the Judge gave them. It may be, or we can even assume that it is bound to result, that when the Brotherhood, under the positive mandate to negotiate diligently, marshals all of the tremendous economic pressures, the threats of strikes, and other forces open to it, it can compel the Railway to open up these very same jobs to equal competition. But if that occurs, it is the result of the bargaining process which Congress has so long nurtured as the basic weapon of the arsenal for industrial peace."

In each of the cases cited in the majority opinion of the Court of Appeals, the Court was presented with a

problem by which colored employees were being deprived of seniority rights which they had previously acquired by contract.

The first case is that of Steele v. L. & N. R. R. Co., 323 U. S. 192, 89 L. Ed. 123, 65 Sup. Ct. 226. In that case, the respondent Brotherhood, purporting to act as representative of the entire craft of firemen, without informing the negro firemen, or giving them opportunity to be heard, served a notice on the respondent Railroad of the Brotherhood's desire to amend the existing collective bargaining agreement in such manner as ultimately to exclude all negro firemen from the service. Later, the Brotherhood and the Railroad entered into a new agreement which resulted in a change in the status of the negro firemen and ultimately the Brotherhood and the Railroad, acting under the agreement, disqualified all the negro firemen, even though they had performed and were performing, until their disqualifications, their work satisfactorily. Moreover, the plaintiffs were later replaced by white persons junior to them, and the plaintiffs were assigned to more difficult and less remunerative work. The court held that the respondent Brotherhood had failed in its statutory duty to bargain fairly, for all members of the craft, by entering into the agreement with the Railroad which resulted in the displacement or disqualification of negro firemen.

The effect of the decree of the Steele case is to restore the rights the plaintiffs had prior to the adoption of the contractual provision which was held to be discriminatory. The effect of the decree in this case is to create a new status of employment for the plaintiffs to which the Railroad Company has never agreed and which has not been demanded of the railroad by the men themselves as by their exclusive bargaining representative. Thus, in the Steele case, the Court was not by judicial decree writing a contract of employment. The restoration of a contractual

provision is within the province of the judiciary; but the creation of contractual provisions is not.

Unless the Court grants this Petition for Certiorari and clarifies the point discussed above, serious inconsistencies in the application and effect of the Steele case and the others cited in the Court of Appeals opinion will result.

The Railway Labor Act, Title 45, U. S. C. A., Secs. 151-163, was first enacted in 1926. The purpose of this Act was to give railroad employees a right to bargain collectively with its employer and to choose a collective bargaining representative. Once the employees select that bargaining representative, the employer is obligated to deal exclusively with it. As stated by this Court in the case of Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, 57 S. C. R. 592, "It (the act) imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other." The decree in the Virginian case directed the railroad to negotiate with the bargaining representative but it did not fix the terms to which the employer must agree. In fact, the Court recognizes even the statutory limitation for the opinion states: "The statute does not undertake to compel agreement between employer and employee." Yet here the Court goes beyond that which it recognizes that the Railway Labor Act does not permit and fixes employment rights which have never been agreed to by the parties Congress has said must bargain with each other. In addition to going beyond the proprieties set forth in the Virginian case, the Court's decree circumvents the statutory procedures set forth in the Railway Labor Act.

Sec. 152 of that Act provides: "No carrier, its officers or agents shall change the rates of pay rules or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements

or in Section 6 of this Act." Sec. 6 provides in substance that the intended changes shall be negotiated between the carrier and the labor organizations with notice to all parties of where the negotiations are to be held. These provisions are meaningless if a court, as in this case, can fix employment assignments to which agreement has never been made in accordance with the statutory procedure.

Negotiation for changes in rules, working conditions and seniority rights are being conducted daily by the hundreds of railroads in this courtry and the bargaining representative for their employees. If the decision of the District Court is permitted to stand serious, new, important problems will be injected into those negotiations. The desirability of accepting demands of the Brotherhood must be tested by the railroads not only from the effect of the demands on the railroad, but also on minority employees. Agreement to Brotherhood proposals without a decision by the courts that there is no discrimination of a minority group might be too risky for, without that prior approval, the railroad might be held liable for damages as this petitioner is now being held in this case. Manifestly, it was not the intent of Congress in the enactment of the Railway Labor Act that decisions be delayed pending a court decision on the bona fides of proposals made by the Brotherhoods. Yet, if a railroad is punished by way of damages where it has breached no contractual or statutory duty to a minority group of employees, what alternative other than prior court approval does it have? The complexity of the problem is pointed out in the dissenting opinion of Brown, Jr., as follows:

> "What duty did the Railway violate? The Brotherhood had, to be sure, the profound obligation fully and earnestly to bargain to prevent, and, where necessary, remove, discriminations. This is found in the unique position of the Brotherhood under the Railway Labor Act to bargain for all. But no such duty rests upon

the Railway. It has, first, no right whatever to make contracts direct with its employees or groups of them. It is compelled, Sec. 6, Railway Labor Act, 45 U. S. C. A. 156, to deal with the statutory bargaining representative (Brotherhood) alone.

"But the question is: Was it bound to do so? To hold that it was is to say that it was on the Railway to make certain that the Brotherhood was fulfilling its statutory obligations. It is to say that in the negotiation process, each proposal must be viewed by the adversary not alone in terms of its own self-interest, but equally in terms of whether the proposing adversary has complied fully with the trust which it owes, not to employer, but to union members and employees affected. It is the genius of the bargaining process that, akin to our Anglo-American adjudicatory mechanism of unfettered advocacy, the safest, surest and best result is achieved when each side, in open, vigorous, unapologetic contention sets forth its claims and demands without stint. The process weakens, it becomes suspect, it invites the necessary intrusion of outside (governmental or otherwise) umpires as enlightened self-interest ceases to be the sole guide. It cannot be that the Railroad shall police the Brotherhood's performance.

"So while the Railroad knew all the while that the Brotherhood was not fulfilling its duties, it was not up to it either to demand a change or price the conscience of its adversary.

"If it had no duty to make its adversary bargain better, on what ground can it be made to pay for that which such energetic, conscientious bargaining might have produced?"

The imposition of damages against this petitioner necessarily implies a duty to act on the part of the employer which is contrary to the provisions of the Railway Labor

Act, supra, and the holding in the Virginian case, supra, the Steele case, supra, and the others cited in the per curiam opinion of the Court of Appeals.

The uncertainty the decision will cause in the interpretation of the Railway Labor Act and the misconstruction of decisions of this Court involving the important Federal problem of the duty an interstate carrier owes to majority and minority employees, we respectfully urge are matters for clarification and decision by this Court.

Respectfully submitted,

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Attorneys for Petitioner, Central of Georgia Railway Company.

I, W. H. Sadler, Jr., one of the attorneys for the petitioner, Central of Georgia Railway Company, in the above entitled cause, do hereby certify that I have caused to be served a copy of the above and foregoing Petition for Writ of Certiorari to the United States Court of Appeals, for the Fifth Circuit, on Messrs. Cooper, Mitch and Black, Attorneys for Respondents, and on Messrs. Jackson, Rives, Pettus & Peterson, Attorneys for Brotherhood of Railroad Trainmen, an unincorporated Association.

W. H. Sadler, Jr.

APPENDIX A.

In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit.

No. 15,451.

Central of Georgia Railway Company and Brotherhood of Railroad Trainmen,
Appellants and Cross-Appellees,

versus

Odell Jones, Dock Rutledge, A. C. Cain, and Major Threat et al., for and on Behalf of Themselves and Others Similarly Situated,
Appellees and Cross-Appellants.

(And Reverse Title)

Appeals and Cross-Appeal from the United States District Court for the Northern District of Alabama.

(January 31, 1956.)

Before Rives, Jones and Brown, Circuit Judges.

Per Curiam: In an agreement made in 1952 between the appellants, Central of Georgia Railway Company and Brotherhood of Railroad Trainmen, a provision having its origin in a contract made more than thirty years before was included which prohibited negroes from being used in certain positions in the train service of the Railway. The appellees, negro employees of the Railway

and members of the Brotherhood, brought a class suit in which they alleged discrimination on account of race, and sought an injunction against the enforcement of the contract provision and the practices it authorized. Damages were also asked. The District Court granted the relief sought but, invoking the Alabama Statute of Limitations, it allowed damages only for the period of one year prior to the commencement of suit. The Railway and the Brotherhood appealed. The employees took a cross-appeal asserting that the one-year limitation period was inapplicable. The District Court was right. The law on the substantive question is well established by **Steele v. L. & N. Railroad Company,** 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; **Tunstall v. Brotherhood,** 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; **Graham v. Brotherhood,** 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; **Brotherhood v. Howard,** 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; **Rolax v. Atlantic Coast Line Railroad Co.,** 186 F. 2d 473; **Brotherhood v. Mitchell,** 190 F. 2d 308. See also **Syres v. Oil Workers International Union,** 350 U. S. 892, ... S. Ct. ....., ... L. Ed. ....., reversing 223 F. 2d 739. As to the question of the time for which damages may be recovered, we approve the limit of one year as fixed by the District Court, and this whether under the statute of limitations or the equitable doctrine of laches. See **Brotherhood v. Mitchell,** supra; **Gardner v. Panama Railroad Co.,** 342 U. S. 29, 72 S. Ct. 12, 96 L. Ed. 31.

The judgment is

Affirmed.

Brown, Circuit Judge, Dissents, in part.

Brown, Circuit Judge, dissenting in part:

I believe that the relief, in this form, and at this time, against the Railway was erroneous. I would therefore reverse as to it.

I accept, however, without restraint or reservation all that is expressed in the District Court's opinion and findings and implied in this Court's per curiam opinion concerning the obvious knowledge by the Railway that the contract[1] and practices were in violation[2] of law and had to be terminated by declaring the contract void as to

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[1] Apparently as early as 1919, the contract was stated in the same terms as in the first overall collective bargaining agreement of January 1, 1927 between Central of Georgia Railway Company and the Brotherhood of Railroad Trainmen, and readopted in successive contracts without negotiation of any kind concerning this issue, down to and including the contract "Schedule of Wages, Rules and Regulations Governing Its Trainmen, Twelfth Edition, effective August 1, 1952," signed by Brotherhood and Railway:

"Article 26.

"Seniority and Filling Vacancies.

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggageman, brakeman, or switchman, except that Negroes are not to be used as conductors, flagmen, baggagemen or yard conductors.

"(b) Negroes are not to be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights. White men are not to be used as porters; no porter to have any trainmen's rights except where he may have established same by three months continuously in freight service."

The written contract thus covers specifically the position of the Negro in road service, and, in part at least, as switchmen in yard service. The contract status is not so precise or categorical as to "lister switchmen" but there is no difference in the nature of the discrimination or the available remedies as to this category.

[2] The court found as a fact that by the contract and the long continued practices of Brotherhood and Railway, Negroes, otherwise fully qualified to perform the tasks, were unlawfully denied the right to compete for work as flagman and baggagemen in road service and lister switchmen in yard service.

Brakemen work at the front of the train; they ascend the seniority ladder to (1) flagmen, (2) baggagemen, and (3) conductors. Flagmen work at the rear of a train and understudy conductors. Bag-

the future. In this way, following the Steele mandate, the Railway will cease to enjoy and benefit under it.

But the relief[3] did not stop there. Here, the Railway is required to pay (through the incidental money award)

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gagemen work in the mail car. A white man retains full seniority on each lower job as he progresses up the ladder.

In yard service Negroes and whites compete equally for regular switchman's work. As more white men found yard service attractive, the practice developed of listing on the bulletin (i. e., placing up for bid) switching jobs as "booking and flagging," or as jobs called for switchmen qualified in "booking and flagging," sometimes called "lister switchmen" from the fact that such employees perform certain clerical work, keep simple books, lists of cars and records formerly done principally by yard conductors (foremen). The evidence showed, and the trial court found, that Negroes frequently perform these simple responsibilities in emergencies, occasional holidays when white men are not available, and are in fact fully qualified. The Railway agrees since it contends that Negroes are eligible now and if denied such work, it is inadvertent. The Brotherhood is more fluid on the point, but its attack by specification and brief on lister switchmen is the legal one that this is a Railway Adjustment Board controversy, which has no real basis.

We are in agreement that there can be no real dispute about discrimination in fact on account of race. While Negroes and whites compete equally for brakemen, and a white brakeman of less seniority cannot "roll" (displace) a Negro brakeman with greater seniority, it is entirely possible and a common occurrence for a Negro brakeman to be "rolled" by a white brakeman of greater seniority at the same time a white man, junior to the Negro, is serving on the same train as flagman or baggageman. The result is the same where new jobs as flagman or baggageman open up or persons are working the extra board. In both, the Negro competes only for brakeman while white men junior to him monopolize the other two.

[3] The Court enjoined Brotherhood and Railway from enforcing the 1952 contract or operating practices which denied Negroes the right to compete (and train) for these jobs; and affirmatively required each to grant the same seniority rights, training privileges, assignments and opportunities to these jobs as white persons of similar continuous service would enjoy. In addition, as "incidental damages," it awarded the amounts representing the difference between plaintiffs' actual earnings and the respective amounts they would have earned had each of them been assigned jobs and permitted opportunities to train therefor upon the basis of continuous service seniority, together with amounts equivalent to any other losses proximately caused.

vicarious wages back to July 29, 1953, and affirmatively afford equal opportunity for actual employment in each of these jobs for the future. As to the past, the Railway is thus required to pay damages; as to the future, it is compelled to make contracts of employment.

There must be some legal warrant for each of these visitations.

What duty did the Railway violate? The Brotherhood had, to be sure, the profound obligation fully and earnestly to bargain to prevent, and, where necessary, remove, discriminations. This is found in the unique position of the Brotherhood under the Railway Labor Act to bargain for all. But no such duty rests upon the Railway. It has, first, no right whatever to make contracts direct with its employees or groups of them. It is compelled, Sec. 6, Railway Labor Act, 45 U. S. C. A. 156, to deal with the statutory bargaining representative (Brotherhood) alone.

It could, of course, under Sec. 6 have given notice that the contract should be amended to terminate the discrimination, and had it done so, the Brotherhood presumably would have been obliged to negotiate in good faith on this issue up through the mediation provisions, 45 U. S. C. A. 154, 155, 160.

But the question is: was it bound to do so? To hold that it was is to say that it was on the Railway to make certain that the Brotherhood was fulfilling its statutory obligations. It is to say that in the negotiation process, each proposal must be viewed by the adversary not alone in terms of its own self-interest, but equally in terms of whether the proposing adversary has complied fully with the trust which it owes, not to employer, but to union members and employees affected. It is the genius of the bargaining process that, akin to our Anglo-American

adjudicatory mechanism of unfettered advocacy, the safest, surest and best result is achieved when each side, in open, vigorous, unapologetic contention sets forth its claims and demands without stint. The process weakens, it becomes suspect, it invites the necessary intrusion of outside (governmental or otherwise) umpires as enlightened self-interest ceases to be the sole guide. It cannot be that the Railroad shall police the Brotherhood's performance.

So while the Railroad knew all the while that the Brotherhood was not fulfilling its duties, it was not up to it either to demand a change or prick the conscience of its adversary.

If it had no duty to make its adversary bargain better, on what ground can it be made to pay for that which such energetic, conscientious bargaining might have produced?

Nor, it seems to me, does the grant of future relief withstand scrutiny any better. It is, first, of course, a complete by-pass of the whole process of the quasi-voluntary bargaining-mediation mechanism of the Railway Labor Act. Both Brotherhood and employer are left out. The District Judge, as a chancellor, acquires a power to do what no Mediator, Adjustment Board or Emergency Fact Finder is empowered to do—force a labor contract. Indeed, he does it with no semblance of negotiation or mediation—he does it in spite of; he does it over the protest of all but one segment.

It is to infuse with adequate effectiveness by a judicial decree a policy which Congress has repeatedly declined to create by legislation. It is to force an employer to hire persons of a given race for given jobs. That is the aim of proposed Fair Employment Practice Code. Until it is enacted, it is not for Government through its judicial arm, or otherwise, to say to this employer: these must be hired.

See, Mr. Justice Minton's dissent in **Brotherhood of Railroad Trainmen v. Howard**, 343 U. S. 768, 775, 778, 96 L. Ed. 1283, 1289, 1291.

As far as Government can go, is to release the victims of this discriminatory contract from its restraining burden and impose on their vicarious agent the heavy duty of energetic bargaining for all, or even more than what the Judge gave them. It may be, or we can even assume that it is bound to result, that when the Brotherhood, under the positive mandate to negotiate diligently, marshals all of the tremendous economic pressures, the threats of strikes, and the other forces open to it, it can compel the Railway to open up these very same jobs to equal competition. But if that occurs, it is the result of the bargaining process which Congress has so long nurtured as the basic weapon of the arsenal for industrial peace.

There is a vital distinction between our case and that of **Steele**, **Rolax**, and the others: in each of them the discriminatory contract altered a pre-existing status—a status previously accorded to the affected Negroes by voluntary bargaining. When the offending contract was removed by equity decree, the parties were restored to their former position in which Negroes could perform the jobs (firemen) for which the Railroads had long hired them. But here, once the 1952 contract is discarded as void (as it should be) nothing remains—no former practice—no former implied agreement to accord any of these jobs to Negroes. The slate is clean. The way is open for the future, but there is nothing in the past to revive as the basis for an interim arrangement.

It is plain from my joining in the Court's opinion that I do not accept the contention of Brotherhood or Railway that **Steele** forbids discriminatory future **changes** alone. The antiquity of the discrimination here, its perpetuation in the contract through successive renewals gives neither

the right to demand its continuation. But when it is dissipated, it is not for a Court by coercive decree to fill the void. The contract is removed as an impediment to the statutory scheme. That scheme revives the process of bargaining at that point, and it is for Brotherhood and Railway, not the Court, to make the new agreement.

I therefore respectfully dissent to this extent.

A True Copy:

Teste:

John A. Feehan, Jr.,
Clerk of the United States Court of
Appeals for the Fifth Circuit,
By Clara R. James,
Deputy.

(Seal)

APPENDIX B.

Findings of Fact, Conclusions of Law and Judgment.

Filed October 29, 1954.

In the United States District Court for the Northern District of Alabama, Southern Division.

Odell Jones; Dock Rutledge; A. C. Cain; Major Threat, et al., for and in behalf of themselves and others similarly situated, Plaintiffs,

vs. Civil Action No. 7760.

Central of Georgia Railway Company, a corporation; Brotherhood of Railroad Trainmen, et al., Defendants.

This cause having come on for hearing on the Plaintiffs' prayers for declaratory judgment, permanent injunction and incidental damages, and the Court having heard and considered the evidence and pleadings, and having examined the exhibits, and having heard argument by counsel, makes the following

Findings of Fact.

1. Plaintiffs O'Dell Jones, Dock Rutledge, A. C. Cain, Major Threat, L. J. Taylor, James A. Baker, Eddie Williams, Lucien L. Mabry, James Sparks, Jesse James, Nottingham Frye, R. D. Gooden, E. Hines, Floyd Johnson, E. V. Allen, C. C. Peek, James Hicks, Willie Taylor, Sebron Jordon, James Danley, Clarence Hicks, Hurley Gooden, Robert L. Scott, C. Barnett, W. B. Wilson, Jewett Howard, Irwin Allen, Lennard Bell, Joe Bell, Robert Berry, Emmitt Buggs, Freeman Gilbert, Alex Harris, Gabriel Hoskin, Nelson Jackson, Willie Lawton, March Nelson, Henry Denson, Eugene Flournoy, John Golden, H. Hardwick, Leon Morman, S. Nathaniel, Fate Nelson, Mayo Oliver, Henry Pat-

terson, Otis Ray, Willie Robinson, Ralph Smith, Milton Thomas, James L. Warren, H. Williams, Jr., William Griffin, Albert Jackson, Louis Littleton, R. L. Taylor, Green Wilcox, Bill Davis, Moses S. Smith, and George Nelam, are Negroes and citizens of the United States employed by the Central of Georgia Railway Company (hereinafter called "defendant Railway") as trainmen working as switchmen or brakemen. All plaintiffs have substantial seniority, based upon continuous service, in their respective seniority districts, as trainmen on the lines, or in the yards of the defendant Railway.

2. This is a class action brought by plaintiffs on their own behalf and on behalf of all Negro trainmen employed by the defendant Railway. There are common issues of law and fact affecting the rights of plaintiffs and other Negro trainmen of the defendant Railway similarly situated.

3. Defendant Railway is a corporation operating as a common interstate carrier. It is engaged in and is doing regular, continuous and substantial business in the Northern District of Alabama.

4. Defendant Brotherhood of Railroad Trainmen (hereinafter referred to as "defendant Brotherhood") is a national unincorporated association whose membership consists in chief part of white trainmen (commonly known as brakemen, flagmen, switchmen, baggagemen and conductors) employed by various railroads engaged in interstate commerce, including the defendant Railway. Defendant Brotherhood acts as a bargaining representative under the Railway Labor Act within and has a local subordinate Lodge within the Northern District of Alabama, Birmingham Lodge No. 590. Birmingham Lodge No. 590 and defendant Lester L. Watkins are true and adequate representatives of the Brotherhood and its members in this District. However, the defendant Brotherhood has volun-

tarily appeared in this action and has waived any objections to service of process or venue.

5. Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen is a subordinate Lodge and Branch of the Brotherhood. Its membership does not include employees of the defendant Railway.

6. Defendant Lester L. Watkins is an officer of said Birmingham Lodge No. 590. His duties as such do not relate to employees of defendant Railway.

7. Defendant Brotherhood is and has been in the past the exclusive representative under the Railway Labor Act (45 U. S. C., Sect. 151, et seq.) of the class or craft of trainmen, including plaintiffs, employed by the defendant Railway.

8. Defendant Brotherhood's members constitute and have in the past constituted the majority of the craft or class of trainmen on the defendant Railway and the defendant Brotherhood under and by virtue of the Railway Labor Act acts and has acted as the sole bargaining agent and representative of the entire class of trainmen, including plaintiffs and others similarly situated employed by defendant Railway. As such agent, defendant Brotherhood negotiated agreements with the defendant Railway as to rates of pay, rules and conditions of employment for all members of the said class or craft including the agreement which is defendant Railway's Exhibit 3, effective August 1, 1952, and specifically paragraphs (a) and (b) of Article 26 of said agreement governing seniority and the filling of vacancies as follows:

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagmen, baggagemen, brake-

man, or switchman, except that Negroes are not to be used as conductors, flagmen, baggagemen or yard conductors.

"(b) Negroes are not to be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights. White men are not to be used as porters; no porter to have any trainman's rights except where he may have established same by three months continuously in freight service."

Negro trainmen, including plaintiffs, are now and have been in the past excluded from membership in the defendant Brotherhood and do not have now and have not had in the past any voice in selecting or controlling the officers of defendant Brotherhood who determine and execute its collective bargaining policies and collective bargaining agreements, current and past, including the agreement referred to above in this paragraph and practices thereunder.

9. Since these plaintiffs and the trainmen for whom this class action is brought are all Negroes, they are and have been, by the practices and agreements of defendants Railway and Brotherhood, made ineligible for assignment as or to train for flagmen, baggagemen, conductors, and lister switchmen (lead men or switchmen performing "booking and flagging" in yard service). Many have served for long periods of time as brakemen and switchmen on the lines of the Defendant Railway and the seniority which they have thus acquired entitles them, but for the actions of defendants, to obtain better paid, more desirable and more steady runs and assignments on the defendant Railway.

10. White brakemen pursuant to defendant's agreements and practices promote or are assigned as flagmen and baggagemen and are permitted thereafter to retain their seniority as brakemen. Negro brakemen are not permitted to promote to and are not assigned as flagmen, baggagemen

and other more desirable jobs. Junior white trainmen are permitted to work as flagmen or baggagemen while Negro trainmen, with greater seniority, are displaced from their jobs as brakemen. Junior white trainmen are permitted to work upon regular assignments as flagmen, while Negro trainmen, with greater seniority, are required to work upon the extra board.

11. These Negroes now serving as brakemen are actually qualified to serve as and most have, on various occasions, satisfactorily performed the duties of flagmen. The occupations of flagmen and brakemen are essentially the same except that one operates from the back of the train while the other operates from the front. Record-keeping which is performed by flagmen is relatively simple and can be performed by a person capable of reading and writing. All of the defendant Railway's trainmen, including plaintiffs, must know how to read and write in order to become trainmen; and all must pass the same examinations as white trainmen.

12. Switchmen are yard employees of the defendant Railway. Defendants have similarly discriminated against them because they are Negroes.

13. The duties of a switchman consist mainly of making the necessary connections to pick up freight cars and the necessary disconnections to drop off freight cars at various industries, of giving signals when necessary for train movements, of braking and letting off brakes when necessary, etc.

14. Switchmen are supervised by yard foremen whose sole responsibility it is to keep certain records and make physical entries therein.

15. Until fairly recently the little flagging which needs to be done around the yard was done by any switchman, white or Negro.

16. Yard foremen have now begun to delegate varying amounts of their record keeping, depending on the individual foreman, to a particular white switchman (or switchmen) in the crew and to assign what little flagging there is to those white switchmen. These particular switchmen became known by the terms switchman "capable of booking and flagging", or "lister switchmen". Job openings then were posted separately for switchmen "capable of booking and flagging" and "lister switchmen" and for just plain "switchmen". The practice developed under which Negroes cannot bid on the jobs involving "booking and flagging" or on "lister switchman" jobs, but white men can bid both for a plain switchman's job and a job involving "booking and flagging".

17. Those Negroes serving as switchmen now are actually qualified to perform the duties of "lister switchmen", or "booking and flagging" switchmen. The duty of record-keeping or making physical entries upon records which is allegedly a part of the "lister switchman's" duties is, in fact, a part of the "yard foreman's" duties and is relatively simple. The flaggging which is allegedly a part of the "lister switchman's" duties is, historically, a part of every switchman's duties. Furthermore, most of the Negro switchmen have satisfactorily "booked and flagged" when no white men were available with no complaint from defendant Railway and have thereby qualified to work as such.

18. The practice of prohibiting Negroes from serving as "lister switchmen" or "booking and flagging switchmen" has in the past resulted in Negro switchmen, older in point of seniority, being delegated to the extra board to catch irregular runs or being eliminated from the service altogether when white switchmen, younger in point of seniority, were working regularly in the same yard as "lister switchmen".

19. The discriminations on the basis of color described above between brakemen and flagmen have damaged Negro brakemen in that they have been forced to accept runs away from home on occasions and, thus, to bear unnecessary expense and discomfort.

20. As a result of and pursuant to the above agreements and practices, these plaintiffs and other Negro trainmen have been denied assignments to which they would have been entitled by virtue of their seniority had they been dealt with on the same seniority basis as white trainmen and have been assigned to jobs which were less desirable, less remunerative, and more onerous; and some plaintiffs have been forced out of employment entirely.

21. The denial of fair treatment to plaintiffs in regard to their seniority and job assignments is not justified or required by the defendant Railway's needs for training potential conductors.

22. There are already trained and available considerably more conductors than there are conductor's jobs on defendant Railway's lines. There is no shortage of trained conductors and no such shortage is imminent.

23. Many of the plaintiffs have been found qualified to perform the duties of "lister switchmen" (lead men or switchmen performing "booking and flagging") but they have been denied the right to permanent assignment to such jobs.

24. The defendant Brotherhood as the sole bargaining agent and representative of the entire class of trainmen including plaintiffs upon defendant Railway's lines has made no demands on the defendant Railway to eliminate or remove from the agreements (or to eliminate the above practices) unfairly denying plaintiffs' seniority rights as trainmen.

25. The defendant Brotherhood is continuing and is threatening to continue to insist upon the application by the defendant Railway of the above contract provisions and practices further to discriminate against these plaintiffs and other similarly situated with respect to job assignments and the right to train for same. And defendant Railway, without objection has applied and is continuing and threatens to continue to apply said provisions and practices against plaintiffs and others similarly situated.

26. The illegal discriminations practiced by the defendants Railway and Brotherhood against the plaintiffs have proximately caused damages to the plaintiffs in being required to transfer and work away from home, being deprived of job assignments, and in being assigned to and required to work at jobs that have been less desirable and less remunerative than the jobs to which plaintiffs would have been assigned, had no such illegal discriminations been practiced by said defendants.

27. The failure of defendant Brotherhood to represent plaintiffs fairly and without hostile discrimination because of color caused plaintiffs not to be assigned to jobs and not to enjoy the right to train therefor, in the manner in which white trainmen were assigned and permitted to train, upon the basis of continuous service.

28. The denial to plaintiffs of jobs and assignments and the right to train therefor as set out above and the consequent damages, constitute irreparable injury for which there is no adequate remedy at law.

On the basis of the foregoing findings of fact, the Court makes the following

Conclusions of Law.

1. This Court has jurisdiction of the parties and the subject matter, and venue is properly laid.

2. The Brotherhood of Railroad Trainmen as collective bargaining representative, under the Railway Labor Act, of the entire class or craft of trainmen employed by defendant railway owes and has owed a statutory fiduciary duty, and duty of agency, to represent all members of the craft fairly and properly and without discrimination.

3. Defendant Brotherhood has not represented and is not now representing plaintiffs and other Negro trainmen similarly situated without discrimination because of plaintiffs' race.

4. The provisions limiting and restricting plaintiffs' seniority rights (including restrictions on the right to promote and to be used in various jobs and assignments) as trainmen or denying plaintiffs' seniority based upon continuous service in the contract which is Defendant's Exhibit 1, in particular, Article 26, paragraphs (a) and (b) thereof, to the extent kept in effect since passage of the Railway Labor Act discriminate against, apply unfairly to, do not amount to good faith collective bargaining representation of plaintiffs and the class plaintiffs represent, and are illegal and void. Practices thereunder which discriminate against plaintiffs are likewise illegal.

5. The Railway Labor Act must be read into, and determines the validity of, any such contract entered into subsequent to the passage of that Act. The contract in question was entered into after the Act's passage.

6. Plaintiffs are entitled to seniority rights (including the right to promote and to be used in various jobs and assignments) under existing contracts and practices between defendants Brotherhood and railway which white trainmen enjoy when said illegal provisions and practices are not applied.

7. Plaintiffs do not have an adequate or available administrative remedy.

8. In the absence of any so-called available administrative remedy for plaintiffs, the contractual limitations of 60 days and one year set out in Article 30 of the contract which is defendant Railway's Exhibit 3 are without applicability here.

9. Since the illegal contractual provisions and practices described above prohibit Negroes from being used as baggagemen, flagmen or lister switchmen (lead-men or switchmen performing "booking and flagging") and in view of the evidence showing that these plaintiffs are not and have not been permitted to bid on those jobs, plaintiffs were not, as a condition precedent to relief, required to bid for those jobs because the law does not require them to do a futile thing.

10. The defendant Brotherhood has failed to discharge its statutory duty to the class of Negro trainmen represented by plaintiffs by failing and refusing equally and similarly to seek benefits sought for the white members of the trainmen craft.

11. Since the defendant Brotherhood as collective bargaining representative is prohibited from making a contract containing the provisions and practices here challenged by plaintiffs and held by the Court to be discriminatory and void, neither the Brotherhood nor Railway is entitled to take the benefits thereof.

12. When engaging in a contract with the defendant Brotherhood which acts as fiduciary on behalf of all the employees in the class of trainmen, the defendant Railway cannot take any benefits under that contract if the contract itself is discriminatory and the Court concludes that the contract in question is discriminatory.

13. Since the discrimination practiced by defendants Brotherhood and Railway against the plaintiffs extends to

opportunities to train for certain jobs that would permit plaintiffs to advance in the line of seniority, the fact that plaintiffs, or some of them, may now be without actual experience in those jobs is not material or controlling and does not bar plaintiffs from proper equitable relief.

14. The plaintiffs are not entitled to relief against defendant Birmingham Lodge No. 590 or the defendant Lester L. Watkins, but are entitled to the relief prayed for against the defendant Brotherhood and the defendant Railway.

15. Plaintiffs, including the entire class represented by named plaintiffs, are entitled to an injunction against defendants Brotherhood and Railway and to incidental damages to compensate for the losses caused by the discriminations practiced against them. The question of damages is to be referred for determination by a special master. Since it is found to be a fact that the defendant Railway and Brotherhood have caused plaintiffs' damages by the illegal discriminations practiced against them, the fact that the amount of such damages will not be capable of exact proof will not prohibit plaintiffs from recovery of such amount of damages as can be established by reasonably satisfactory evidence.

16. Plaintiffs' incidental damages should include an amount representing the difference between plaintiffs' actual earnings and the respective amounts plaintiffs would have earned had each of them been assigned jobs and runs and permitted to train for same, upon the basis of continuous service seniority as was done for white trainmen, together with amounts equivalent to any losses proximately caused by the above illegal discriminations.

17. Seniority rights as referred to herein and in the judgment in this case means rights to runs and job assignments (and rights to train therefor) and other benefits

arising out of the contract, express or implied, between defendant Railway and defendant Brotherhood.

18. The issues in this action are not triable or right by jury and the claims of plaintiffs for incidental damages can most appropriately and expeditiously in the discretion of the Court, because of the stress of business in this District, the number of individuals to be examined, and the nature of the individual claims, be determined by a reference to a master for an accounting thereof.

19. Plaintiffs' claims for damages are limited to the period subsequent to a date one year prior to the date of the filing of the complaint.

20. Plaintiffs are entitled to their costs.

21. An injunction should issue to embody the above and to restrain the defendants Brotherhood and Railway from further carrying out or complying with the aforesaid provisions of the above agreement referred to in Conclusion of Law No. 4 or of practices thereunder, or of any similar agreement, or proposal, or practice which prevents or would prevent plaintiffs from enjoying the seniority, including runs, job assignments, and employment rights and opportunities to train for same, to which their seniority based upon continuous service entitled them, so long as white trainmen receive job assignments, employment rights, and opportunities to train for same based upon continuous service, and to require the defendant Railway within 30 days of the effective date of the injunction herein to assign each of plaintiffs, in the entire class of plaintiffs, to the respective job or run, or to afford opportunity for training for same, to which such seniority entitles him, so long as white trainmen are assigned to such runs and jobs, and given opportunities to train for same, by seniority based upon continuous service under the present contract or any future contract, express or implied, or any practices thereunder.

22. As a Court of equity, this Court must shape its decree to give the entire class of plaintiffs adequate relief by placing all plaintiffs in the positions they would have had if the illegal contractual provisions and practices above described had not existed, so that defendants Railway and Brotherhood may not retain the profits or benefits of the illegality involved in the execution and carrying out of those provisions and practices. So long as white trainmen by contract or practice existing upon defendant Railway exercise seniority based upon continuous service, these Negro trainmen must exercise a similar right.

Judgment.

1. On the basis of the foregoing, it is hereby Ordered, Adjudged and Decreed:

That the defendant Brotherhood of Railroad Trainmen, its officers, agents, employees, members, attorneys, and all persons in active concert or participation with them be and they hereby are restrained and enjoined from directly or indirectly requiring or inducing or compelling the defendant Central of Georgia Railway Company to recognize or comply with the provisions of the agreement between said Railway and said Brotherhood, effective August 1, 1952, and practices thereunder and of any similar agreements applicable to Divisions of defendant Railway, and practices thereunder, or with the provisions of any other agreements, understandings or practices between the defendant Railway and defendant Brotherhood in so far as any such provisions or practices (a) require said Railway to discriminate against plaintiffs or against other Negro trainmen employed by said Railway because they are Negroes, or because they have not trained for jobs for which they have not been permitted to train and to which they have not been permitted to promote because they are Negroes, or (b) fail to grant plaintiffs' seniority rights based upon

continuous service, to assignments as trainmen (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) and to train for said jobs, so long as white trainmen are given such rights.

2. It is further Ordered, Adjudged and Decreed:

That the defendant Central of Georgia Railway Company, its officers, agents, employees, members and attorneys and all persons in active concert or participation with it be and each of them is hereby restrained and enjoined from directly, or indirectly, enforcing or complying with the provisions of the agreement between said Railway and the defendant Brotherhood, effective August 1, 1952, and practices thereunder and of similar agreements applicable to the Divisions of defendant Railway and practices thereunder, or with the provisions of any other agreements, practices or understanding insofar as such provisions (a) require said Railway to discriminate against plaintiffs or against other Negro trainmen employed by said Railway because they are Negroes or because they have not trained for jobs as to which they have been denied promotion and training because they are Negroes, or (b) deny plaintiffs' seniority rights based upon continuous service to jobs as trainmen (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) or opportunities to train for said jobs, so long as white trainmen are given such rights.

3. It is further Ordered that:

(a) Defendants restore, advance, train or assign plaintiffs and other Negro trainmen, similarly situated, without discrimination because they are Negroes, to and for positions and assignments to which their seniority based upon continuous service entitles them, and that their seniority and other employment rights be re-established, established

and maintained in the same manner as such rights are established and maintained for white trainmen.

(b) That the defendants cooperate together fully in the maintenance of a non-discriminatory system of job assignments and training therefor applicable to plaintiffs on the Railway and in future negotiations between the Railway and the Brotherhood as representative of the entire class of trainmen.

(c) That defendant Railway cease and desist from refusing and failing so long as white trainmen are given seniority based upon continuous service (1) to grant plaintiffs' seniority rights, assignments and opportunities to train for jobs (including baggagemen, flagmen, and lister switchmen, or "booking and flagging," as used in the findings herein) as white trainmen are given, based upon continuous service; (2) to assign plaintiffs to assignments and jobs (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) and to permit them to train therefor to which their seniority as trainmen based upon continuous service entitles each of them.

(d) That defendant Railway grant said seniority rights, make said assignments of plaintiffs and allow training therefor, so long as white trainmen are given such rights, assignments and training, provided that a period of thirty days from the date of this decree shall be allowed for making said assignments effective.

(e) That the defendants Railway and Brotherhood pay to each Negro trainman in the entire class of plaintiffs incidental damages, including the respective amounts representing the difference between plaintiffs' actual earnings and the respective amounts plaintiffs would have earned had each of them been assigned jobs and permitted opportunities to train therefor upon the basis of continuous service seniority, together with amounts equivalent to any

other losses proximately caused to plaintiffs by the failure so to assign jobs and to permit training therefor; all such damages to be limited to a period subsequent to a date one year prior to the filing of the complaint herein.

(f) That the determination of the respective amounts of such incidental damages owing to each plaintiff by said defendants be referred to a special master and the Court herewith expressly reserves the appointment of a special master to be made by an order herein specifying his powers and directing his action.

(g) The demand for jury trial be and the same hereby is denied.

(h) All costs of this proceeding be and the same hereby are taxed against defendants Railway and Brotherhood and all costs of the reference to a special master be and the same are taxed to said defendants.

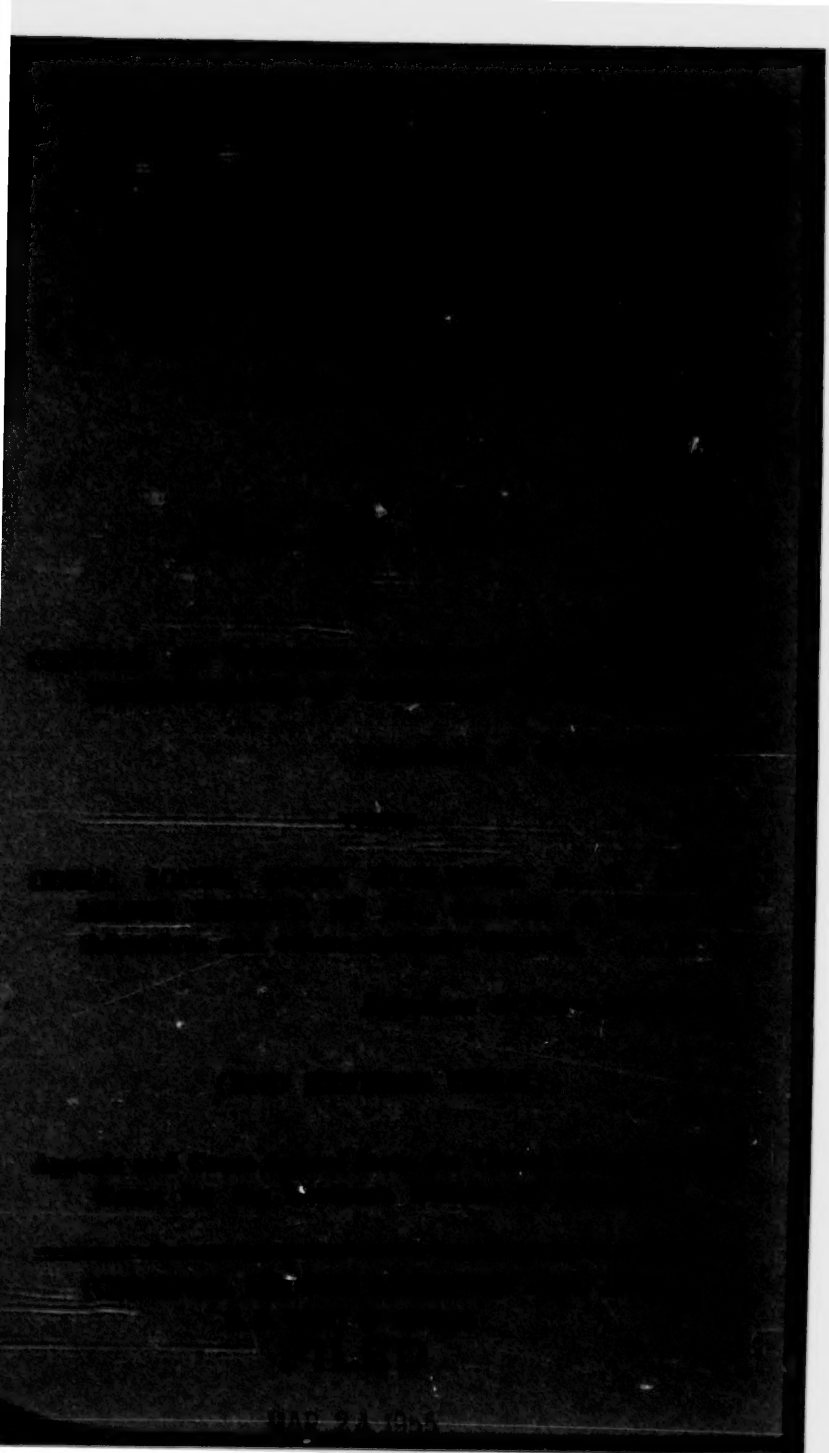
(i) It is further Ordered, Adjudged and Decreed by the Court:

That the rights of plaintiffs are in accordance with the above Conclusions of Law including those contained in the opinion filed in this cause.

(j) The Court retains control of this matter so that additional orders to effect this decree may be entered.

Done this 29th day of Oct., 1954.

(S) H. H. Grooms,
(H. H. Grooms),
United States District Judge.



INDEX

	PAGE
Complaint	1
Exhibit "A"—List of Names	15
Motion of Plaintiffs for Preliminary Injunction	16
Order entered 7/29/54 granting hearing on Preliminary Injunction	17
Motion of Defendant, Central of Georgia Railway Co., to Dismiss Complaint	18
Motion of Defendant, Lester L. Watkins to dismiss Complaint	19
Motion of Defendant, Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen to quash and/or dismiss Complaint	23
Motion of Defendant, Brotherhood of Railroad Trainmen to quash and/or dismiss Complaint	30
Volunteer appearance, and waiver of service of process and venue by Defendants, Brotherhood of Railroad Trainmen, and Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, an unincorporated association, dated 10/5/54	36
Order entered 10/8/54 Overruling Defendants' Motion to quash or dismiss, and continuing Plaintiffs' Motion for Preliminary Injunction	39
Amendment to Complaint and Order allowing same thereon	40
Answer of Defendant, Central of Georgia Railway Company to Complaint	41
Answer of Defendant, Brotherhood of Railroad Trainmen to Complaint	57
Answer of Defendant, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen to Complaint	72
Answer of Defendant, Lester L. Watkins to Complaint	74

INDEX—Continued

	PAGE
Defendants' Demand for Jury Trial	76
Amendment to Answer of Central of Georgia Railway Company and Order allowing same thereon	77
Clerk's Court Minutes	78
Transcript of Evidence	79
Motion of Plaintiffs to strike the demand for jury trial and Ruling granting same	80
Colloquy between Court and Counsel	81
Opening Statement made by Mr. Cooper Counsel for Plaintiffs	81
Opening Statement made by Mr. Miller, Counsel for Defendant, Central of Georgia Railway Company	87
Opening Statement made by Mr. Al G. Rives Counsel for Defendants, Brotherhood of RR., Trainmen and Lester L. Watkins	92
Colloquy between Court and Counsel	98
Evidence for Plaintiffs:	
Testimony of Odell Jones	100
Major Threat	127
Homer Williams, Jr.	168
Dock Rutledge	200
Emmett Bugg	215
Willie Lawton	221
Colloquy between Court and Counsel	242
Evidence for Defendant—Central of Ga., Ry., Co.:	
Testimony of W. J. Collins	244
W. J. Collins (Resumed)	329
Evidence for Plaintiffs:	
Testimony of Otis Ray	330
A. C. Cain	342

INDEX—Continued

PAGE

Evidence for Defendant—Brotherhood of RR., Trainmen:
Testimony of L. E. Chester 353
Opinion of the Court 358
Exception of Defendant—Brotherhood of RR., Trainmen to Opinion of the Court 361
Findings of Fact and Conclusions of Law 362
Judgment, entered 10/29/54 376
Motion of Defendant, Central of Georgia Railway Company for Supersedeas 380
Order entered 11/23/54 Granting Supersedeas to Central of Georgia Ry., Co. 382
Supersedeas Bond of Defendant, Central of Georgia Ry., Co. 383
Notice of Appeal by Defendant, Central of Georgia Railway Company 385
Motion of Defendant, Brotherhood of Railroad Trainmen for Supersedeas 386
Order entered 11/23/54 Granting Supersedeas to Brotherhood of Railroad Trainmen 387
Supersedeas Bond of Defendant, Brotherhood of Railroad Trainmen 388
Notice of Appeal by Defendant, Brotherhood of Railroad Trainmen 390
Appeal Bond 391
Notice of Cross-Appeal by Plaintiffs, Odell Jones, et al. 394
Designation of Contents of Record on Appeal by Appellant—Central of Georgia Railway Company 395
Designation of Contents of Record on Appeal by Appellant—Brotherhood of Railroad Trainmen 399

INDEX—Continued

PAGE

Order entered 12/28/54 transmitting Original Exhibits to Appellate Court 403

Order entered 12/28/54 extending time to file Record in Appellate Court 404

Clerk's Certificate 406

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

ODELL JONES; DOCK RUTLEDGE; A. C. CAIN; MAJOR THREAT et al., for and in behalf of themselves and others similarly situated,

Plaintiffs,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY, a corporation; BROTHERHOOD OF RAILWAY TRAINMEN, an unincorporated association; LOCAL LODGE NO. 590, BROTHERHOOD OF RAILWAY TRAINMEN, an unincorporated association; and LESTER L. WATKINS,

Defendants.

Civil Action No. 7760.

COMPLAINT.

Filed July 29, 1954.

This action arises under Title 28, U.S.C. 1337, 2201 and 2202, and Title 45, Section 151, et seq. commonly known as the Railway Labor Act.

For their complaint, plaintiffs allege that:

1. As more fully hereinafter set forth, plaintiffs are Negroes, citizens of the United States, who bring this action on their own behalf and on behalf of oth-

ers similarly situated, to preserve, enforce and establish their rights to employment, job assignments, and seniority on the defendant railway against the discriminatory practices and agreements of the defendants which have been declared unlawful by the Supreme Court of the United States.

2. The individuals on whose behalf this action is brought are employed by the defendant railway as trainmen (commonly known as brakemen and switchmen or yardmen) and will be so referred to in this complaint. Such Negro trainmen constitute a large class in number and it is therefore impractical to bring them all before the Court. There are common questions of law and fact affecting the rights of these plaintiffs and those of other Negro trainmen on whose behalf this action is brought.

3. Defendant Central of Georgia Railway Company (hereinafter called defendant railway) is a corporation operating as a common interstate carrier. It is engaged in, and is doing regular, continuous and substantial business in the Northern District of Alabama.

4. Defendant Brotherhood of Railway Trainmen (hereinafter referred to as Brotherhood) is a national unincorporated association whose membership consists in chief part of the white trainmen (commonly known as flagmen, switchmen, baggagemen and conductors employed on various railroads engaged in interstate commerce including the defendant railway. Brotherhood employs agents, maintains offices and acts as bargaining representative under the Railway Labor Act within the Northern District of Alabama

and is otherwise doing business regularly within the said District.

5. Defendant Local Lodge No. 590, Brotherhood of Railway Trainmen, is a subordinate lodge, and a branch of Brotherhood. It is composed of members of Brotherhood who reside in the Northern District of Alabama, and resides in and does business regularly in Birmingham, Alabama.

6. Defendant Lester L. Watkins resides at 3901—41st Avenue, North, Birmingham, Alabama, in the said District and is Local Chairman and the executive officer of the defendant Lodge No. 590; he is sued herein as a representative of the members of the defendant Brotherhood and the defendant's subordinate Lodge No. 590.

7. Upon information and belief, defendant subordinate Lodge No. 590 is truly and fairly representative of the other subordinate lodges of Brotherhood and of Brotherhood itself, and the interest of all members, subordinate lodges and of the Brotherhood will be adequately represented in this action by the said defendant and defendant Watkins. The defendant subordinate Lodge No. 590 and the defendant Watkins are sued as representatives of the membership of all the subordinate lodges and of the Brotherhood itself as a class under Rule 23(a) of the Federal Rules of Civl Procedure.

8. Defendant Brotherhood by virtue of its constitution and by its practice restricts its membership to white trainmen (brakemen, switchmen, flagmen, baggagemen and conductors), and excludes Negro trainmen from membership.

9. Defendant Brotherhood's members at all times herein mentioned constituted and now constitute the majority of the craft or class of trainmen on most of the interstate railroads of the United States including the defendant railway, and the defendant Brotherhood under and by virtue of the Railway Labor Act has acted as the sole bargaining agent and representative of the entire class or craft of trainmen, including plaintiffs and others similarly situated. As such agent, Brotherhood negotiated agreements with the defendant railway as to rates of pay, rules and conditions of employment for all members of the said class or craft, including agreements referred to in paragraph 15 of this complaint.

10. For a period of years, defendant railway has conspired and agreed with defendant Brotherhood to advance the interests of the members of the Brotherhood and unlawfully to eliminate Negro trainmen from their lawful employment and to deprive them of their rights, job assignments to which their seniority would entitle them, seniority and property as herein alleged, and in furtherance thereof did enter into the aforesaid agreement and into other unlawful and secret agreements and arrangements, written and oral to accomplish the said unlawful purposes.

11. At the times herein mentioned, defendant Brotherhood in assuming the obligation to act and in acting as sole bargaining agent and representative under the Railway Labor Act did not fairly and equitably bargain or act for or on behalf of all members of the class or craft of trainmen involved in negotiations between the Brotherhood and defendant railway; in so dealing with such railway, the Brotherhood did

not perform and failed to discharge its lawful duty, obligation and trust to protect equally the interest of all members of the craft. Instead and in violation of the law, Brotherhood acted exclusively for the benefit and in the interest of its own membership and discriminated against these plaintiffs and other Negro trainmen and deprived them of their right to work on fair and equal terms with white trainmen and with members of the Brotherhood; and to that end defendant Brotherhood continued in effect, negotiated and consummated with the defendant railway a number of unlawful agreements, including the agreements referred to in paragraph 15 of this complaint.

12. Upon information and belief, plaintiffs allege that since the date of the agreements referred to in paragraph 15 hereof, the defendant Brotherhood and defendant railway entered into other and supplemental agreements, sometimes in writing and sometimes oral, and engaged in practices which extended the unlawful disciminatory employment provision of said agreements.

13. All of the said agreements and practices were intended by the defendants railway and Brotherhood to operate to the serious injury of the plaintiffs and others similarly situated as herein more fully set forth and have so operated.

14. Employment as trainmen by defendant railway and the seniority rights which attach to such employment are property rights of great importance to the trainmen so employed, including the individual plaintiffs, and such employment constitutes plaintiffs' sole means of livelihood.

15. (a) The agreement between the Central of Georgia Railway Company and its Conductors, Trainmen and Yardmen, Eleventh Edition, effective February 1, 1927, and signed by the defendant Brotherhood, provides:

"Article 26.

"Seniority and Filling Vacancies.

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggageman, brakeman or switchman, except that negroes are not to be used as conductors, flagmen, baggagemen or yard conductors.

"(b) Negroes are not to be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights.

"White men are not to be used as porters; no porter to have any trainman's rights except where he may have established same by three months continuously in freight service."

(b) The Central of Georgia Railway Company Schedule of Wages, Rules and Regulations Governing its Trainmen, Twelfth Edition, effective August 1, 1952, and signed by defendant Brotherhood, and presently in effect, provides:

"Article 26.

"Seniority and Filling Vacancies.

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggageman, brakeman, or switchman, except that negroes are not to be used as conductors, flagmen, baggagemen or yard conductors.

"(b) Negroes are not to be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights. White men are not to be used as porters; no porter to have any trainman's rights except where he may have established same by three months continuously in freight service.

"(c) The seniority rights and standing of trainmen shall begin on the date and hour employed and will be attached to the Division where they are employed. The seniority rights and standing of yardmen shall begin on the date and hour employed and will be attached to the yard where they are employed."

(c) Since these plaintiffs, and the trainmen for whom this class action is brought are all Negroes, they are, by the practices and agreements of defendants made ineligible for assignments as flagmen, baggagemen or conductors. Many have served for long periods of time as brakemen on the lines of the defendant railway and the seniority which they have thus acquired entitled them, but for the actions of

defendants claimed, to obtain some of the better paid, more desirable runs and assignments on the defendant railway.

(d) Negro trainmen are permitted by defendants to exercise seniority only upon trainmen jobs at the front end of a train, that is, as brakemen. They are not permitted to exercise seniority upon more desirable jobs of flagman at the rear end of a train.

(e) In yard service, Negroes are not permitted to exercise seniority, upon any switchman's job that involves the use of pencil and paper and as a consequence are not permitted to exercise their seniority upon more desirable switching jobs which involve "booking or flagging".

(f) White brakemen pursuant to defendants' agreements and practices promote or are assigned as flagmen and are permitted thereafter to retain their seniority as brakemen. Negro brakemen are not permitted to promote to and are not assigned as flagmen and other more desirable jobs. Junior white trainmen are permitted to work as flagmen while Negro trainmen, with greater seniority are displaced from their jobs as brakemen. Junior white trainmen are permitted to work upon regular assignments as flagmen, while Negro trainmen, with greater seniority, are required to work upon the extra board. As stated by the Supreme Court of the United States, in Graham v. Brotherhood, 70 S. Ct. 14, 15:

"The effect of the agreement is to deprive them solely because of their race of rights and job assignments to which their seniority would have entitled

them. Many Negro . . (trainmen) have been thus displaced or demoted and replaced by white . . . (trainmen) having less seniority."

16. The defendant railway has, at all times hereinafter referred to, established by agreement with Brotherhood seniority divisions in which white trainmen have preference rights to job assignments carrying more favorable rates of pay and more desirable working conditions which, but for the actions of the defendants' complained of, would be available to plaintiffs if based upon the length of service of trainmen in each Division. Because of the unlawful agreements and practices between the defendant railway and the defendant Brotherhood, such seniority preference rights have been denied to the plaintiffs herein and to other Negro trainmen employed by the railway.

17. Under the terms of the said unlawful agreements and by said unlawful practices, and as a result of the aforesaid conspiracy, plaintiffs and other Negro trainmen have been denied rights and job assignments and have been unlawfully displaced by white trainmen having less seniority in service and the plaintiffs and other Negro trainmen have thereby lost positions, wages and other lawful benefits to which plaintiffs and other Negro trainmen would have been otherwise entitled, and have otherwise been damaged.

18. Plaintiff Odell Jones is a Negro and a citizen of the United States residing in Birmingham, Alabama. He is a brakeman for the Central of Georgia Railway with seniority in employment since September 12, 1925. In pursuance of the unlwful conspiracy, agreements and practices herein referred to, plaintiff

Odell Jones has been denied the right to work regularly as a flagman (although he is called upon to perform such duties during emergencies) and he is not permitted to exercise any seniority upon that job. He is qualified to serve as a flagman or baggageman, both more desirable jobs than brakeman, although white men with less continuous service than his are permitted to do so.

19. Plaintiff Dock Rutledge is a Negro and a citizen of the United States residing in Phenix City, Alabama. He is employed as a brakeman in the yard of defendant railway at Columbus, Georgia, as a yard brakeman or switchman, with seniority in employment since 1930. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Dock Rutledge has been wrongfully denied the right to exercise his seniority upon all "extra work", and upon more desirable trainmen jobs of "booking and flagging."

20. Plaintiff A. C. Cain is a Negro and a citizen of the United States residing in Albany, Georgia. He is employed as a brakeman for the Central of Georgia Railway with seniority in employment since 1936. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff A. C. Cain has been displaced from his regular job which a white trainman with less seniority continued to work, and has otherwise been wrongfully denied his seniority as a brakeman by defendant railway; has been denied the right to exercise his seniority upon the jobs of flagman or baggageman, for which he is qualified and has been denied the right to promote to better jobs.

21. Plaintiff Major Threat is a Negro and a citizen of the United States residing in Columbus, Georgia. He is employed as a brakeman in the yard of defendant railway at Columbus, Georgia, as a yard brakeman or switchman with seniority in employment since October 23, 1930. In pursuance of the unlawful conspiracy, agreements and practices herein referred to, plaintiff Major Threat has been wrongfully denied the right to exercise his seniority upon all "extra work", and upon more desirable trainmen jobs of "booking and flagging".

22. The following named plaintiffs (and those in Exhibit A hereto, made a part hereof) are similarly situated, have similarly achieved their seniority and had their seniority wrongfully denied and their places, assignments and more desirable jobs to which their seniority entitles them, respectively, have been given to white trainmen in violation of their rights and to their injury and damage:

Leroy Gantt
Louis Littleton
Milton Thomas
S. Nathaniel
Eugene Flournoy
Henry Denson
Fate Nelson
Otis Ray
John Golden
James L. Warren
William Griffin
R. L. Taylor
Henry Patterson
Leon Morman

Mayo Oliver
Ralph Smith
H. Hardwick
H. Williams, Jr.
Willie Robinson
Albert Jackson

23. Other Negro trainmen employed by the defendant railway have been displaced in their positions and deprived of rights and job assignments to which their seniority as trainmen would entitle them and have been discharged from employment or demoted to less desirable jobs to their injury and damage. Unless enjoined the defendants will continue unlawfully to displace and demote and deny seniority to Negro trainmen.

24. The practices and agreements of defendants herein alleged are illegal and violative of the Railway Labor Act.

25. The unlawful practices and agreements of the defendants complained of herein are continuing and are causing injury and damage to plaintiffs and to other Negro trainmen similarly situated on whose behalf this action is brought. Plaintiffs and such other Negro trainmen are still being excluded from positions, assignments and employment as trainmen on the aforesaid railroad to which they are rightfully entitled, and they are being denied seniority and other rights which are lawfully theirs. The continued exclusion of plaintiffs and other Negro trainmen from their proper positions and assignments and the continued denial to them of their seniority and other rights aggravate and increase their damage and in-

injury with the passage of time and unless this Court grants the relief prayed for plaintiffs will be irreparably damaged.

26. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray that:

a. This Court take jurisdiction and determine the rights of the parties and enter judgment declaring the said agreements referred to in paragraph 15 hereof and other similar agreements among the same parties and the practices thereunder to be invalid and unenforceable as collective bargaining agreements regulating and controlling the employment of trainmen on the railway which is party to said agreements with the Brotherhood; declaring that the said agreements are null and void insofar as they deprive plaintiffs and other Negro trainmen of seniority and rights and job assignments to which their seniority would entitle them, and declaring that plaintiffs have been illegally removed from their poistions and have been illegally denied assignments and advancement as trainmen and should be restored, assigned or advanced to such jobs and such runs as their seniority rights would entitle them to but for the said unlawful agreements and practices;

b. This Court issue a permanent injunction enjoining defendants, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them from recognizing or enforcing or complying with the said agreements and any other agreements or understandings which in terms or application countenance or enforce similar

unlawful and discriminatory practices against plaintiffs and other Negro trainmen similarly situated, or from taking any action which would have similar discriminatory or unlawful effect as would the enforcement of such agreements or practices;

c. This Court enter judgment ordering defendants to restore, advance or assign plaintiffs and other Negro trainmen similarly situated to their positions from which they were wrongfully and unlawfully displaced and to the positions and job assignments to which their seniority entitles them, and that their seniority and other employment rights be fully reinstated;

d. This Court issue a permanent injunction against defendant Brotherhood, its officers, agents, servants, employees, attorneys and subordinate lodges and all persons in active concert or participation with them enjoining them from purporting to act as plaintiffs' representative or as the representative of the class or craft of trainmen under the Railway Labor Act so long as defendant Brotherhood and its subordinate lodges and their officers and agents shall not represent or act fairly on behalf of all trainmen including these plaintiffs and other Negro trainmen or shall discriminate against them in matters relating to wages, seniority, tenure or other conditions of employment;

e. Plaintiffs recover judgment against defendants for damages for their loss of employment and wages, and other resulting damages, by reason of the said unlawful practices and agreements of the defendants;

f. Pending the final hearing and determination of the action, this Court issue a preliminary injunction against the defendants enjoining and restraining them from continuing the unlawful acts and practices complained of.

g. Plaintiffs may have such other, further and different relief as to the Court may seem proper, together with the costs and disbursements of this action.

COOPER, MITCH & BLACK,
By (S.) JEROME A. COOPER,
Attorneys for Plaintiffs.

1329 Brown-Marx Building,
Birmingham, Alabama.

Filed Jul. 29, 1954.

* * * * * * * *

EXHIBIT "A".

Emmitt Buggs
Nelson Jackson
L. F. Taylor
James A. Baker
Eddie Williams
Lucien L. Mabry
James Sparks
Jessie Jones
Nottingham Frye
R. D. Gooden
Freeman Gilbert
Lennard Bell

Irwin Allen
E. Hines
Floyd Johnson
Willie Lawton
Gabriel Hoskin
E. V. Allen
C. C. Peek
James Hicks
Willie Taylor
Sebron Jordan
James Danley
Clarence Hicks
Hurley Gooden
Allen Harris
Robert L. Scott
Joe Bell
C. Barnett
W. B. Wilson
Jewett Howard
March Nelson
Robert Berry

MOTION FOR PRELIMINARY INJUNCTION.

Filed July 29, 1954.

(Title Omitted.)

Come now plaintiffs, by their attorneys, and move this Court for a preliminary injunction to restrain and prevent the defendants and those acting for and in their stead and behalf from committing and doing and continuing to commit and do the unlawful acts

against the plaintiffs which are set forth in the complaint heretofore filed herein.

COOPER, MITCH & BLACK,
By JEROME A. COOPER,
Attorneys for Plaintiffs.

Filed July 29, 1954.

* * * * * * * *

ORDER.

Upon due consideration, it is hereby ordered that plaintiffs' motion for preliminary injunction filed herein this day be and the same is hereby set down for hearing on September 1, 1954, at 10:00 A.M. at the United States District Court, Birmingham, Alabama.

It is further ordered that a copy of said motion and of this order be promptly served upon defendants by the Marshal of this Court.

Done this 29th day of July, 1954.

SEYBOURN H. LYNNE,
United States District Judge.

Filed July 29, 1954.

* * * * * * * *

MOTION TO DISMISS.

Filed August 17, 1954.

(Title Omitted.)

Comes the Defendant, Central of Georgia Railway Company, a Corporation, and, appearing specially, moves to dismiss this action on the following grounds:

1. There has not been legally effective service of process on movant.

2. This Court does not have jurisdiction of the subject matter of said litigation.

3. This Court does not have venue of the said action.

4. The complaint does not state a cause of action upon which relief can be granted.

5. The relief prayed for is barred by the applicable statute of limitations.

Respectfully submitted,

(S.) A. R. LAWTON,
(A. R. Lawton),
(S.) JOHN B. MILLER,
(John B. Miller),

P. O. Box 527,
Savannah, Georgia.

SADLER & SADLER,
By W. H. SADLER, JR.,
(W. H. Sadler, Jr.),

1311 Comer Building,
Birmingham 3, Alabama.

Attorneys for said Defendant.

I hereby certify that a copy of the foregoing motion has been served upon Messrs. Cooper, Mitch & Black, counsel for plaintiffs, on this the 17th day of August, 1954.

(S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr.),
Of Counsel for said Defendant.

MOTION TO DISMISS.

Filed August 23, 1954.

(Title Omitted.)

Comes, Lester L. Watkins, individually as one of the defendants in the above styled cause and moves the Court to dismiss plaintiffs' complaint, and for grounds of this motion sets down and assigns the following, separately and severally, to-wit:

1st. For that he, the said Lester L. Watkins as Local Chairman of Birmingham Lodge No. 590, has jurisdiction only over Yard employees of the Louisville & Nashville Railroad Company and has no jurisdiction whatever over the properties of the Central of Georgia Railway Company or employees of the Central of Georgia Railway Company.

2nd. For that he, the said Lester L. Watkins has nothing whatsoever to do with the working agreements of employees of the Central of Georgia Railway Company.

3rd. For that the plaintiffs' complaint does not present a justiciable controversy.

4th. For that the plaintiffs' complaint does not state a justiciable controversy for declaratory judgment.

5th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plaintiffs have grounded jurisdiction of the Court in this cause on the Railway Labor Act and that on the averments of the plaintiffs' complaint, this Court does not have jurisdiction to hear and determine the alleged controversy set forth in the plaintiffs' complaint, but that the controversy must be presented and determined by the National Railroad Adjustment Board.

6th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the National Railroad Adjustment Board, and not this Court, has jurisdiction of the matters and things attempted to be made the basis of the plaintiffs' complaint.

7th. For that it affirmatively appears that the plaintiffs' complaint does not contain facts or averments sufficient to show that this Court has jurisdiction of the alleged controversy.

8th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the alleged controversy arises under the Railway Labor Act, and that the same must be settled under and in accordance with its provisions.

9th. For that it affirmatively appears from the averments of the plaintiffs' complaint that there ex-

isted and still exists and that there was and still is available to the plaintiffs an administrative remedy as provided for in the Railway Labor Act for the settlement of the alleged controversy referred to in the plaintiffs' complaint.

10th. For that the Congress of the United States has conferred upon the National Railroad Adjustment Board the power and authority to decide the question presented in plaintiffs' complaint.

11th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the plaintiffs have had an election of remedies and that plaintiffs have elected to have the alleged controversy made the basis of the plaintiffs' complaint handled in the manner prescribed therefor in the Railway Labor Act and that therefore this Court does not have jurisdiction to hear and determine said alleged controversy.

12th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that this Court may not render a declaratory judgment as prayed for by the plaintiffs, for that a special statutory proceeding has been provided for the adjudication of such cases in the Railway Labor Act.

13. For that it does not affirmatively appear from the averments of the plaintiffs' complaint, that the plaintiffs have a right to bring such a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

14th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plain-

tiffs do not have the right to institute a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

15th. For that it affirmatively appears from the averments of the plaintiffs' complaint that there is not a diversity of citizenship between the plaintiffs and all of the parties that would inevitably be bound by declaratory judgment in this case.

16th. For that it does not affirmatively appear from the plaintiffs' complaint that more than $3000.00 exclusive of interest and costs, is involved in the controversy made the basis of plaintiffs' prayer for declaratory judgment.

17th. For that it affirmatively appears from the plaintiffs' complaint that this Court lacks jurisdiction because the amount actually in controversy is less than $3000.00, exclusive of interest and costs.

18th. For that the plaintiffs' complaint fails to state a claim upon which relief can be granted.

(S.) LESTER L. WATKINS,
(Lester L. Watkins),

Verification.

State of Alabama,
Jefferson County.

Before me, the undersigned authority, in and for said County in said State, personally appeared Lester L. Watkins, who is known to me and being by me duly sworn deposes and says that the facts stated in the above and foregoing motion are true and correct according to the best of his information, knowledge and belief.

In Witness Whereof I have hereunto set my hand and official notarial seal on the 20th day of August, 1954.

(S.) T. M. CONWAY, JR.,
Notary Public.

JACKSON, RIVES, PETTUS & PETERSON,
By .....,
Attorneys for Lester L. Watkins.

Address:
Tenth Floor Massey Building,
Birmingham 3 Alabama,
Telephone: 3-3275.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Lester L. Watkins, do hereby certify to the Court that I served a copy of the above and foregoing motion on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 20th day of August, 1954.

AL G. RIVES,
Attorney for Lester L. Watkins.

MOTION TO QUASH AND/OR DISMISS.

Filed August 23, 1954.

(Title Omitted.)

Comes Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, by and through Al G.

Rives, its duly authorized attorney, and appearing specially in this cause for the limited purpose of moving the Court to quash the purported service of process on the respondent Local Lodge No. 590, Brotherhood of Railway Trainmen, an unincorporated association, and/or for the limited purpose of moving the Court to dismiss plaintiffs' complaint and for no other purpose whatsoever, and without submitting the said Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen to the jurisdiction of the Court, does hereby respectfully move the Court to quash the purported service of process as to the respondent Local Lodge No. 590, Brotherhood of Railway Trainmen, an unincorporated association, and the return of the United States Marshal on the summons issued to said respondent, separately and severally, and/or to dismiss plaintiffs' complaint and for grounds of this motion, sets down and assigns the following, separately and severally, to-wit:

1st. For that there is no such organization bearing the name of Local Lodge No. 590, Brotherhood of Railway Trainmen, an unincorporated association.

2nd. For that the return of the United States Marshal on the aforesaid summons is so vague, indefinite and uncertain that same is insufficient as a matter of law to constitute lawful service of process of said summons on the respondent therein mentioned.

3rd. For that the return of the United States Marshal on said summons is void and of no force or effect as service of process on the respondent therein mentioned.

4th. For that it does not appear from the return of the United States Marshal on said summons that process was served upon any officer or official member of any branch or local of the respondent therein mentioned.

5th. For that Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen does not have jurisdiction over the properties of the Central of Georgia Railway Company or any of the employees of the Central of Georgia Railway Company.

6th. For that there is no member of Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, who is an employee of the Central of Georgia Railway Company.

7th. For that Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen does not have jurisdiction to hear or determine or handle grievances of employees of the Central of Georgia Railway Company.

8th. For that Birmingham Lodge No. 590 has no jurisdiction over the working agreements of employees of the Central of Georgia Railway Company.

9th. For that the plaintiffs' complaint does not present a justiciable controversy.

10th. For that the plaintiffs' complaint does not state a justiciable controversy for declaratory judgment.

11th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plaintiffs have grounded jurisdiction of the Court in this cause on the Railway Labor Act and that on the averments of the plaintiffs' complaint, this Court does not have jurisdiction to hear and determine the alleged controversy set forth in the plaintiffs' complaint, but that the controversy must be presented and determined by the National Railroad Adjustment Board.

12th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the National Railroad Adjustment Board, and not this Court, has jurisdiction of the matters and things attempted to be made the basis of the plaintiffs' complaint.

13th. For that it affirmatively appears that the plaintiffs' complaint does not contain facts or averments sufficient to show that this Court has jurisdiction of the alleged controversy.

14th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the alleged controversy arises under the Railway Labor Act, and that the same must be settled under and in accordance with its provisions.

15th. For that it affirmatively appears from the averments of the plaintiffs' complaint that there existed and still exists and that there was and still is available to the plaintiffs' an administrative remedy as provided for in the Railway Labor Act for the settlement of the alleged controversy referred to in the plaintiffs' complaint.

16th. For that the Congress of the United States has conferred upon the National Railroad Adjustment Board the power and authority to decide the question presented in plaintiffs' complaint.

17th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the plaintiffs have had an election of remedies and that plaintiffs have elected to have the alleged controversy made the basis of the plaintiffs' complaint handled in the manner prescribed therefor in the Railway Labor Act and that therefore this Court does not have jurisdiction to hear and determine said alleged controversy.

18th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that this Court may not render a declaratory judgment as prayed for by the plaintiffs, for that a special statutory proceeding has been provided for the adjudication of such cases in the Railway Labor Act.

19th. For that it does not affirmatively appear from the averments of the plaintiffs' complaint, that the plaintiffs have a right to bring such a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

20th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plaintiffs do not have the right to institute a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

21st. For that it affirmatively appears from the averments of the plaintiffs' complaint that there is not a diversity of citizenship between the plaintiffs and all of the parties that would inevitably be bound by declaratory judgment in this case.

22nd. For that it does not affirmatively appear from the plaintiffs' complaint that more than $3000.00, exclusive of interest and costs, is involved in the controversy made the basis of plaintiffs' prayer for declaratory judgment.

23rd. For that it affirmatively appears from the plaintiffs' complaint that this Court lacks jurisdiction because the amount actually in controversy is less than $3000.00, exclusive of interest and costs.

24th. For that the plaintiffs' complaint fails to state a claim upon which relief can be granted.

BIRMINGHAM LODGE NO.
590 OF THE BROTHERHOOD
OF RAILROAD TRAINMEN,
By AL. G. RIVES,
Its duly authorized attorney.

Verification.

State of Alabama,
Jefferson County.

Before me, the undersigned authority, in and for said County in said State, personally appeared Al G. Rives, who is known to me and being by me duly sworn deposes and says that he is the duly authorized attorney of Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, and that he

has authority to make and file the above and foregoing motion and that the facts stated in said motion are true and correct according to the best of his information, knowledge and belief.

In Witness Whereof I have hereunto set my hand and official notarial seal on the 20th day of August, 1954.

(S.) T. M. CONWAY, JR.,
Notary Public.

Address of Jackson, Rives,
Pettus & Peterson,
Tenth Floor Massey Building,
Birmingham, Alabama,
Telephone: 3-3275.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen do hereby certify to the Court that I served a copy of the above and foregoing motion on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 20th day of August, 1954.

AL. G. RIVES,
Attorney for Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen.

MOTION TO QUASH AND/OR DISMISS.

Filed August 23, 1954.

(Title Omitted.)

Comes the Brotherhood of Railroad Trainmen, by and through Al G. Rives, its duly authorized attorney, and appearing specially in this cause for the limited purpose of moving the Court to quash the purported service of process on the respondent Brotherhood of Railway Trainmen, an unincorporated association, and/or for the purpose of moving the Court to dismiss the plaintiffs' complaint, and for no other purpose whatsoever, and without submitting the Brotherhood of Railroad Trainmen to the jurisdiction of the Court, does hereby respectfully move the Court to quash the purported service of process as to the respondent Brotherhood of Railway Trainmen, an unincorporated association, and the return of the United States Marshal on the summons issued to said respondent, separately and severally, and/or to dismiss the plaintiffs' complaint, and for grounds of this motion, sets down and assigns the following, separately and severally, to-wit:

1st. For that there is no such unincoporated association bearing the name of Brotherhood of Railway Trainmen.

2nd. For that the return of the United States Marshal on the aforesaid summons is so vague, indefinite and uncertain, that the same is insufficient as a matter of law to constitute lawful service of process of said summons on the respondent therein mentioned.

3rd. For that the return of the United States Marshal on said summons is void and of no force or effect as service of process on the respondent therein mentioned.

4th. For that it does not appear from the return of the United States Marshal on said summons that process was served upon any officer or official member of any branch or local of the respondent therein mentioned.

5th. For that the organization known in name and style as Brotherhood of Railroad Trainmen is an unincorporated association consisting of one Grand Lodge and of such subordinate Lodges as may hold legal and unreclaimed charters granted by the Grand Lodge with its headquarters and principal office and place of business in the City of Cleveland in the Northern District of the State of Ohio; that there are a large number of local or subordinate Lodges of the Brotherhood of Railroad Trainmen scattered at various places throughout the United States, but all of whom are bound together and head up through the national organization of which the Brotherhood of Railroad Trainmen is the combining entity, a sort of holding company, to which local or subordinate Lodges pay dues and through which they work for their mutual benefit nationally; that thus while the Brotherhood of Railroad Trainmen is an unincorporated association, it is nevertheless a jural entity, separate and apart from the local or subordinate lodges, and is an inhabitant or resident of the Northern District of Ohio; that this Court is a Court of limited jurisdiction, a creature of statute, whose activities and powers are circumscribed by the Congress of the United States; that therefore insofar as the Brother-

hood of Railroad Trainmen is concerned venue does not lie in the United States District Court for the Northern District of Alabama, Southern Division.

6th. For that the plaintiffs' complaint does not present a justiciable controversy.

7th. For that the plaintiffs' complaint does not state a justiciable controversy for declaratory judgment.

8th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plaintiffs have grounded jurisdiction of the Court in this cause on the Railway Labor Act and that on the averments of the plaintiffs' complaint, this Court does not have jurisdiction to hear and determine the alleged controversy set forth in the plaintiffs' complaint, but that the controversy must be presented and determined by the National Railroad Adjustment Board.

9th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the National Railroad Adjustment Board, and not this Court, has jurisdiction of the matters and things attempted to be made the basis of the plaintiffs' complaint.

10th. For that it affirmatively appears that the plaintiffs' complaint does not contain facts or averments sufficient to show that this Court has jurisdiction of the alleged controversy.

11th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the alleged

controversy arises under the Railway Labor Act, and that the same must be settled under and in accordance with its provisions.

12th. For that it affirmatively appears from the averments of the plaintiffs' complaint that there existed and still exists and that there was and still is available to the plaintiffs' an administrative remedy as provided for in the Railway Labor Act for the settlement of the alleged controversy referred to in the plaintiffs' complaint.

13th. For that the Congress of the United States has conferred upon the National Railroad Adjustment Board the power and authority to decide the question presented in plaintiffs' complaint.

14th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that the plaintiffs have had an election of remedies and that plaintiffs have elected to have the alleged controversy made the basis of the plaintiffs' complaint handled in the manner prescribed therefor in the Railway Labor Act and that therefore this Court does not have jurisdiction to hear and determine said alleged controversy.

15th. For that it affirmatively appears from the averments of the plaintiffs' complaint, that this Court may not render a declaratory judgment as prayed for by the plaintiffs, for that a special statutory proceeding has been provided for the adjudication of such cases in the Railway Labor Act.

16th. For that it does not affirmatively appear from the averments of the plaintiffs' complaint, that the plaintiffs have a right to bring such a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

17th. For that it affirmatively appears from the averments of the plaintiffs' complaint that the plaintiffs do not have the right to institute a class action as is authorized under the conditions set forth in Rule 23 of the Federal Rules of Civil Procedure.

18th. For that it affirmatively appears from the averments of the plaintiffs' complaint that there is not a diversity of citizenship between the plaintiffs and all of the parties that would inevitably be bound by declaratory judgment in this case.

19th. For that it does not affirmatively appear from the plaintiffs' complaint that more than $3000.00, exclusive of interest and costs, is involved in the controversy made the basis of plaintiffs' prayer for declaratory judgment.

20th. For that it affirmatively appears from the plaintiffs' complaint that this Court lacks jurisdiction because the amount actually in controversy is less than $3000.00, exclusive of interest and costs.

21st. For that the plaintiffs' complaint fails to state a claim upon which relief can be granted.

BROTHERHOOD OF RAILROAD TRAINMEN,
By AL. G. RIVES,
Its duly authorized attorney.

Verification.

State of Alabama,
Jefferson County.

Before me, the undersigned authority, in and for said County and State, personally appeared Al G. Rives, who is known to me and being by me duly sworn, deposes and says that he is one of the duly authorized attorneys for the Brotherhood of Railroad Trainmen, and that he has authority to make and file the above and foregoing motion and that the facts stated in said motion are true and correct according to the best of his information, knowledge and belief.

In Witness Whereof I have hereunto set my hand and official notarial seal on the 19th day of August, 1954.

(S.) T. M. CONWAY, JR.,
Notary Public.

Address of Jackson, Rives,
Pettus & Peterson,
Tenth Floor Massey Building,
Birmingham, Alabama,
Telephone: 3-3275.

Address of Wayland K. Sullivan,
Standard Building,
Cleveland 13, Ohio.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Brotherhood of Railroad Trainmen, do hereby

certify to the Court that I served a copy of the above and foregoing motion on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 20th day of August, 1954.

AL. G. RIVES,
Attorney for Brotherhood of Railroad Trainmen.

(Copy.)

Law Offices

Jackson, Rives, Pettus & Peterson
Tenth Floor Massey Building
Birmingham 3, Alabama

October 5, 1954

Honorable Hobart H. Grooms
United States District Judge
Federal Building
Birmingham, Alabama

Re: Civil Action No. 7760, Odell Jones et als., vs. Central of Georgia Railway Company et als., Our File: 8940.

Dear Judge:

Last night the writer discussed this case over long distance telephone with one of the Chief Executives of the Brotherhood of Railroad Trainmen in Miami Beach, Florida, where he is attending the National Convention of the Brotherhood of Railroad Trainmen.

He authorized us to advise that although there is no such association or organization as "Brotherhood of Railway Trainmen, an unincorporated association", the Brotherhood of Railroad Trainmen, an unincorporated association, will voluntarily appear as a defendant in the case as if it were Brotherhood of Railway Trainmen, an unincoporated association; that although there is a serious question as to the sufficiency of the service of process in the case as to the Brotherhood of Railway Trainmen or Brotherhood of Railroad Trainmen, the Brotherhood of Railroad Trainmen will waive such defective service of process; that although it is believed that the venue of this case as to Brotherhood of Railroad Trainmen, an unincorporated association, does not lie in the State of Alabama, the Brotherhood of Railroad Trainmen will waive the question of venue.

In behalf of Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, this is to advise that although there is no such entity as Local Lodge No. 590, Brotherhood of Railway Trainmen, an unincorporated association, Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen will voluntarily appear as a defendant in the case, as if it were Local Lodge No. 590, Brotherhood of Railway Trainmen, an unincorporated association; that although there is a serious question as to the sufficiency of the service of process in the case as to Local Lodge No. 590 of the Brotherhood of Railway Trainmen, or Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen will waive such defective service of process.

It is our desire to reserve the point raised in the motion to dismiss that plaintiffs should be required

to exhaust their remedy under the Railway Labor Act before being permitted to proceed in a Court of Law. This point is based primarily on the proposition that any one or more of the plaintiffs in this case with or without any one or more of the parties for whose benefit the action was allegedly brought, could and should prosecute their respective alleged grievances through the National Railroad Adjustment Board as provided for in the Railway Labor Act before being permitted to maintain this action at law.

Very truly yours,
JACKSON, RIVES, PETTUS & PETERSON,
By AL. G. RIVES,
Attorneys for Brotherhood of Railroad Trainmen and Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen and Lester L. Watkins.

AGR:gdd
cc: Messrs. Cooper, Mitch & Black,
Attorneys at Law,
Brown-Marx Building,
Birmingham, Alabama.
Messrs. Sadler & Sadler,
Attorneys at Law,
Comer Building,
Birmingham, Alabama.

ORDER OVERRULING DEFENDANTS' MOTION TO QUASH OR DISMISS, AND CONTINUING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

Filed October 8, 1954.

(Title Omitted.)

This case came on for hearing on this day upon defendants' motion to quash or dismiss and upon plaintiffs' motion for a preliminary injunction, all of the defendants, except Central of Georgia Railway Company, in open Court, waiving all questions as to venue and service of process. Said motions being by the Court duly considered, the Court is of the opinion that the defendants' said motions should be overruled and that the motion of the plaintiffs for preliminary injunction should be continued to October 19, 1954, at 9:30 a. m.:

It is, therefore, Ordered, Adjudged and Decreed that the defendants' separate and several motions to quash or dismiss be and each of them are hereby overruled, and that the plaintiffs' motion for preliminary injunction be and same is hereby continued to October 19, 1954, at 9:30 a. m., the date of the hearing of this cause on the merits.

Done and Ordered, this the 8th day of October, 1954.

H. H. GROOMS,
United States District Judge.

AMENDMENT TO COMPLAINT.

Filed October 8, 1954.

(Title Omitted.)

Now come plaintiffs, and with permission of the Court first had and obtained amend the complaint herein in the following particulars only:

1. The description of defendant "Local Lodge No. 590, Brotherhood of Railway Trainmen," as it appears therein, is amended to read "Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen".

2. The typographical error in the description of defendant "Brotherhood of Railway Trainmen" as it appears therein is corrected to read "Brotherhood of Railroad Trainmen".

3. Paragraph 22 is amended by adding thereto, following the name of "Albert Jackson", the following:

Leroy Erwin
Green Wilcox
Bill Davis
Moses S. Smith
George Nelson

COOPER, MITCH & BLACK,
By (S.) JEROME A. COOPER.

1329 Brown-Marx Building,
Birmingham, Alabama.

Copies of the foregoing delivered to Al G. Rives, Esq. attorney of record for defendants Brotherhood of Railroad Trainmen, Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, and Lester L. Watkins, and to Messrs. Sadler & Sadler, attorneys of record for defendant Central of Georgia Railway Company, this 8 day of Oct., 1954.

COOPER, MITCH & BLACK,
By JEROME A. COOPER.

10/8/54. Amendment allowed.
(S.) H. H. GROOMS.

ANSWER OF DEFENDANT, CENTRAL OF GEORGIA RAILWAY COMPANY.

Filed October 15, 1954.

(Title Omitted.)

Comes Now, Defendant, Central of Georgia Railway Company and files this its answer, and respectfully shows unto the Court as follows:

First Defense.

The complaint fails to state a claim against the Central of Georgia Railway Company upon which relief can be granted.

Second Defense.

The employment contract in effect at the time of the employment of each of the complainants con-

tained a contractual statute of limitations of one year within which to file a complaint involving seniority. The following provision has been a part of said employment contract between the Trainmen's craft and defendant railway since 1919 and is now contained in Article (J) of the Schedules of Wages, Rules and Regulations governing Trainmen of defendant railway, Twelfth Edition, effective August 1, 1952:

"A statute of limitations of one year is hereby fixed to take up on appeal a case of seniority. If one year has elapsed without any written protest being filed in such cases, it cannot be taken up by the Trainmen's committee or officials of the Company."

Also, said contract effective August 1, 1952, contains the following provision in Article 30(a):

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

All of complainants have seniority dates prior to August 19, 1951, with many dating back into the 1920's.

The complainants have not complied with either of the aforesaid limiting provisions and therefore their claims are barred as against Central of Georgia Railway Company.

Third Defense.

If complainants have any claims against defendant railway, which defendant railway specifically denies, such claims are governed by the statute of limitations as prescribed by Alabama law.

Fourth Defense.

The complaint clearly shows that the only contract provision involved is one wherein the craft represented by the Brotherhood of Railroad Trainmen and the defendant railway company have agreed that colored trainmen are not to be employed as conductors, flagmen, baggagemen or yard conductors. At the time each of the Complainants was employed, this rule was in effect and each of them was fully aware of its provisions. This rule has been in effect since December 1, 1919. The Complainants are, therefore, barred by their laches in not seeking relief seasonably. Their claims are too stale to now be heard.

Fifth Defense.

The only contract provisions complained of is the provision in the contract between the craft represented by the Brotherhood of Railroad Trainmen and the Defendant Railway Company which prohibits colored trainmen from being used as conductors, flagmen, baggagemen, or yard conductors. Insofar as the Central of Georgia Railway Company is concerned, there is no law which prohibits the defendant Railway Company from restricting certain classes of employment to white people and other classes of employment to colored people. Therefore, as to the Central of Georgia Railway Company, the complaint fails to set forth a claim upon which relief can be granted.

Sixth Defense.

1.

Answering paragraph 1 of the complaint, defendant Railway Company admits that the plaintiffs are Negro citizens but denies that the defendants have been guilty of any discriminatory practices or agreements, and otherwise denies the allegations thereof.

2.

Answering paragraph 2 of the complaint, the defendant Railway Company denies that there are any justiciable questions of law or fact involved in this complaint, but otherwise admits the allegations thereof.

3.

Answering paragraph 3 of the complaint, defendant Railway Company admits the allegations thereof, but shows further that its general offices and all of its general officers are located in Savannah, Chatham County, Georgia, and the records pertaining to employees in the Columbus Division are located at Columbus, Georgia, and Savannah, Georgia. The Columbus Division Superintendent is also located at Columbus. The records pertaining to the Macon Division are located in Macon, Georgia, and Savannah, Georgia, and the Macon Division Superintendent is located in Macon, Georgia. All complainants are employed either in the Columbus or Macon Divisions.

4.

Answering paragraph 4 of the complaint, defendant Railway Company, for want of sufficient information, can neither admit nor deny whether the Brotherhood of Railroad Trainmen is doing business within the Northern District of Alabama. Otherwise, defendant Railway Company admits the allegations of said paragraph.

5.

For want of sufficient information, defendant can neither admit nor deny the allegations of paragraph 5.

6.

For want of sufficient information, defendant Railway Company can neither admit nor deny the allegations of paragraph 6 of the complaint.

7.

For want of sufficient information, defendant Railway Company can neither admit nor deny the allegations of paragraph 7 or 8 of the complaint.

8.

Answering paragraph 9 of the complaint, defendant Railway Company admits that the defendant Brotherhood is the exclusive bargaining representative of the trainmen's craft under the provisions of the Railway Labor Act. Defendant Railway further admits that

said Brotherhood has negotiated all agreements that have been negotiated with defendant Railway concerning said craft. The allegation with reference to various agreements is too vague to enable the defendant Railway Company to answer further.

9.

Answering paragraph 10 of the complaint, the defendant Railway Company denies the allegations as to alleged unlawful secret, conspiratorial agreements, and further denies that defendant railway has entered into any agreement which deprives the complaiants of seniority rights or any other rights. The allegations of said paragraph are too vague and ambiguous to permit further answer.

10.

Answering paragraph 11 of the complaint, defendant Railway Company denies that there has been any agreement or practice which unlawfully discriminates against any of the Complainants or which denies them any of their rights. The allegations of said paragraph 11 are too vague and ambiguous to permit a more specific answer. For want of sufficient information, the defendant Railway Company can neither admit nor deny the remaining allegations thereof.

11.

Answering paragraph 12 of the complaint, defendant Railway Company denies the allegations thereof as pled, and shows that said allegations are too vague

and ambiguous to permit specific answer. Defendant Railway Company denies that it has entered into any agreements or practices which unlawfully discriminate against Complainants.

12.

Defendant Railway Company denies the allegations of paragraph 13 and shows that the same set forth unsupported conclusions of the Complainants and are really too vague and ambiguous to permit answer.

13.

Answering paragraph 14, defendant Railway Company admits that Complainants' seniority rights as yard switchmen or brakemen are of great importance to them, but for want of sufficient information, it can neither admit nor deny whether employment with defendant Railway Company constitutes Complainants' sole means of livelihood. Defendant Railway Company further shows that the only seniority rights to which Complainants or any other employee are entitled spring from their employment contracts and are restricted by such contracts.

14.

Defendant Railway Company admits the allegations of sub-paragraphs 15(a) and 15(b). Further answering these two sub-paragraphs, defendant Railway Company shows that this prohibition against using Negroes as conductors, flagmen, baggagemen or yard conductors, has been one of the conditions of em-

ployment with defendant Railway Company since December 1, 1919.

15.

Answering sub-paragraph 15(c), defendant Railway Company admits that the Negro complainants are not eligible for assignment as flagmen, baggagemen, or conductors. Defendant Railway Company also admits that many complainants have long periods of seniority as brakemen or switchmen but shows that in accordance with their labor contract, they accrued seniority only as brakemen or switchmen and have never accrued any seniority as a flagman, baggageman or conductor. The Negroes' seniority as a brakeman or switchman does not entitle them to any claim for the position of flagman, baggageman or conductor. Any allegations in sub-paragraph 15(c) to the contrary are herewith denied.

16.

Answering sub-paragraph 15(d) of the complaint, defendant Railway Company admits that under the contract the Negro trainmen are permitted to accrue seniority only as brakemen in road service and they do not have any claim to seniority as flagmen. With reference to whether or not the position of flagman is more desirable than that of brakeman, this depends on innumerable factors involving the individual assignment, some flagman jobs being more desirable and some less.

17.

Answering sub-paragraph 15(e) of the complaint, defendant Railway Company shows that it has no agreement or practice which prohibits a colored switchman from serving in a position or so-called "lister-switchman", involving "booking or flagging". Defendant Railway Company does readily admit that colored switchmen have been refused such positions, the grounds of refusal being that they were not qualified to serve and not that the contract forbade it.

18.

Answering sub-paragraph 15(f), defendant Railway Company admits that under the contract Negro brakemen are not entitled to the position of flagmen and accrue no seniority in such positions; whereas, white brakemen may be promoted to flagmen and accrue seniority as such. Defendant Railway Company denies that the position of flagman is necessarily more desirable than the position of brakeman. The pay is the same. Defendant Railway Company can neither admit nor deny the allegations in said sub-paragraph with reference to Negro brakemen with greater seniority being displaced from their jobs as brakemen. Such allegations are too vague and ambiguous to permit answer. By way of explanation, defendant Railway Company shows that a white brakeman has no more claim to a brakeman's job than does a Negro brakeman, and the assignment is based purely upon brakeman seniority. No Negro brakeman has ever been displaced from his job by a white brakeman with less seniority. Allegations to the contrary are herewith denied.

19.

Answering paragraph 16 of the complaint, defendant Railway Company denies the allegations thereof and condemns the same as being a complete misrepresentation of the true facts. The white trainmen are given no preference over the colored trainmen to positions to which colored trainmen are entitled by their labor contracts. True it is, that colored trainmen cannot serve as flagmen, baggagemen or conductors, but they knew this when they took the job. Within the job classification for which colored trainmen are eligible there has been no discrimination. The allegations of paragraph 16 are too vague and ambiguous to permit more specific answer.

20.

The defendant Railway Company denies the allegations of paragraph 17 as pleaded and shows that the same are too vague and ambiguous and constitute such raw conclusions of the pleader that the same are not subject to answer.

21.

Answering paragraph 18 of the complaint, defendant Railway Company admits that O'Dell Jones is a Negro citizen and that he has been a brakeman on the Columbus Division of the defendant Railway Company with seniority as such since September 12, 1925. His residence is unknown to this defendant. Defendant Railway Company denies the remaining allegations.

22.

Answering paragraph 19 of the complaint, defendant Railway Company admits that Complainant Dock Rutledge is a Negro citizen, and has been employed on the Columbus Division by the defendant Railway Company as a switchman with seniority as such since December 22, 1936, and not 1930. Defendant Railway Company denies the remaining allegations of said paragraph.

23.

Answering paragraph 20 of the complaint, defendant Railway Company admits that plaintiff A. C. Cain is a Negro citizen of the United States and that he has been employed as a brakeman since May 5, 1936, on the Macon Division. His residence is unknown to this defendant. The defendant Railway Company denies the remaining allegations thereof.

24.

Answering paragraph 21 of the complaint defendant admits that Major Threat is a Negro citizen and that he has been employed on the Columbus Division as a switchman by defendant Railway Company with seniority as such since January 23, 1930. His residence is unknown to defendant. Defendant Railway Company denies the remaining allegations thereof.

25.

Answering paragraph 22 of the complaint, defendant Railway Company admits that the persons listed

in paragraph 22 and Exhibit "A" are colored employees of the defendant Railway Company but denies the remaining allegations thereof. For convenient reference, defendant Railway Company sets out the names, jobs, division and seniority dates of each of said complainants as follows:

Macon Division—Colored Switchmen.

Name—Seniority date

L. J. Taylor (complaint shows L.F.) February 3, 1944
James A. Baker, November 19, 1940
Eddie Williams February 29, 1940
Lucien L. Mabry, May 25, 1937
James Sparks, October 15, 1925
Jesse James (Complaint shows Jones) April 27, 1927
Nottingham Frye, May 26, 1939
R. D. Gooden, January 22, 1941
E. Hines, August 18, 1951
Floyd Johnson, February 14, 1944
E. V. Allen, June 22, 1923
C. C. Peek, July 28, 1951
James Hicks, May 18, 1940
Willie Taylor, March 14, 1941
Sebron Jordon, May 25, 1937
James Danley, November 6, 1940
Clarence Hicks, June 28, 1941
Hurley Gooden, July 10, 1939
Robert L. Scott, June 16, 1951
C. Barnett, July 29, 1951
W. B. Wilson, January 13, 1947
Jewett Howard, November 19, 1940

Macon Division Colored Trainmen (Brakemen).

Name—Seniority date

Irwin Allen, March 20, 1926
Lennard Bell, January 23, 1937
Joe Bell, October 13, 1942
Robert Berry, November 16, 1942
Emmitt Buggs, December 5, 1942
Freeman Gilbert, May 12, 1944
Alex Harris (complaint shows Allen) June 1, 1921
Gabriel Hoskin, October 25, 1942
Nelson Jackson, November 11, 1942
Willie Lawton, February 6, 1937
March Nelson, February 28, 1937

Columbus Division Colored Switchmen.

Name—Seniority date

Henry Denson, November 28, 1936
Eugene Flournoy, May 20, 1935
John Golden, July 1, 1946
H. Hardwick, November 14, 1940
Leon Morman, September 10, 1927

S. Nathaniel, December 16, 1925
Fate Nelson, April 19, 1940
Mayo Oliver, November 22, 1936
Henry Patterson, September 28, 1925
Otis Ray, March 15, 1944
Willie Robinson, November 25, 1946
Ralph Smith, December 30, 1936
Milton Thomas, September 4, 1925

James L. Warren, June 6, 1950
H. Williams, Jr., July 27, 1944

Columbus Division Colored Trainmen (Brakemen)

William Griffin, November 1, 1941
Albert Jackson, November 13, 1941
Louis Littleton, June 27, 1945
R. L. Taylor, November 13, 1939

The name of Leroy Gantt is listed as complainant. The only Leroy Gantt that defendant Railway Company employs is a hostler's helper in the Columbus Shops. He would have no possible interest in this cause.

26.

Answering paragraph 23 of the complaint, defendant Railway Company denies the allegations thereof. As a matter of fact, most of the allegations are too vague and ambiguous to require answer.

27.

Answering paragraph 24 of the complaint, defendant Railway Company shows that the allegations thereof are groundless and erroneous conclusions of law which require no answer.

28.

Answering paragraph 25 of the complaint, defendant Railway Company shows that the allegations thereof are groundless and erroneous conclusions of

fact and law. The allegations are too vague and ambiguous to permit intelligent answer. Defendant Railway Company shows that Complainants have not been damaged and have not been subjected to any form of irreparable injury and are, therefore, not entitled to any relief, particularly injunctive relief. Defendant Railway Company categorically denies the insinuations, inferences, and allegations of paragraph 25.

29.

Answering the allegation of paragraph 26 of the complaint, defendant Railway Company shows that the same does not require answer as it merely alleges an erroneous conclusion of law.

30.

Further answering, defendant Railway Company shows that it negotiated and executed the existing labor contract with the sole and exclusive bargaining representatives of the Trainmen's craft, to-wit, the Brotherhood of Railroad Trainmen. Said Brotherhood, under the Railway Labor Act, must be recognized and dealt with by defendant Railway Company as the exclusive bargaining agent for the plaintiffs. The plaintiffs are not entitled to any seniority rights as flagmen, baggagemen, or conductors and are restricted to brakemen service on line of road, and switchmen service in the yards. This is a perfectly lawful provision of the labor agreement as far as the defendant Railway is concerned. The Central of Georgia Railway Company has a perfect right to re-

strict such positions to white persons, as it restricts the position of porter to colored persons.

The defendant Railway Company has always treated all of its colored employees fairly and justly and intends to continue to do so. Many of its most loyal, devoted and effective employees are colored. The Central of Georgia is proud of them. However, unless and until the law is changed, the defendant Railway Company intends to continue exercising its managerial discretion as to whether or not it should use colored or white persons in the various classifications of employment.

Wherefore, having fully answered, the defendant Railway Company prays that it be hence discharged without cost.

(S.) W. H. SADLER, JR.,
(W. H. Sadler),

1311 Comer Bldg.,
Birmingham 3, Ala.

(S.) JOHN B. MILLER,
(John B. Miller),

P. O. Box 642,
Savannah, Ga.

Attorneys for Defendant,
Central of Georgia Railway Company.

State of Alabama,
Jefferson County.

Before me the undersigned authority in and for said State and County, personally appeared W. J.

Sullivan, Jr. who being first duly sworn, deposes and says as follows: That he is one of the attorneys for the defendant Central of Georgia Railway Company in the above styled suit and that he is informed and believes and upon such information and belief says that the statements of fact contained in the foregoing Answer are true and correct.

(S.) W. J. SULLIVAN, JR.,
(W. J. Sullivan, Jr.).

Sworn to and subscribed before me, this 15th day of October, 1954.

(S.) MARY M. MOORE,
Notary Public, Jefferson County, Alabama.

I hereby certify that a copy of the foregoing Answer was this date delivered by hand to Messrs. Cooper, Mitch & Black, Attorneys for plaintiffs, at their offices, Brown-Marx Building, Birmingham, Alabama, this the 15th day of October, 1954.

(S.) W. J. SULLIVAN, JR.,

ANSWER OF DEFENDANT, BROTHERHOOD OF RAILROAD TRAINMEN.

Filed October 18, 1954.

(Title Omitted.)

Now comes the defendant, Brotherhood of Railroad Trainmen, an unincorporated association, and files

this its answer to the plaintiffs' complaint and respectfully shows unto the Court as follows:

First Defense.

The complaint fails to state a claim against the Brotherhood of Railroad Trainmen, an unincorporated association, (hereinafter for convenience referred to as the Brotherhood) upon which relief can be granted.

Second Defense.

The defendant Brotherhood alleges that the employment contract in effect at the time of the employment of each of the plaintiffs by the defendant, Central of Georgia Railway Company (hereinafter for convenience referred to as "defendant Railway") contained a contractual statute of limitation of one year within which to file a complaint involving seniority. The following provision has been a part of said employment contract between the Trainmen's Craft and defendant Railway since 1919 and is now contained in Article (J) of the Schedules of Wages, Rules and Regulations governing Trainmen of defendant Railway, Twelfth Edition, effective August 1, 1952:

"A statute of limitations of one year is hereby fixed to take up on appeal a case of seniority. If one year has elapsed without any written protest being filed in such cases, it cannot be taken up by the Trainmen's committee or officials of the Company."

Also, said contract effective August 1, 1952, contains the following provision in Article 30(a):

"All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

All of the plaintiffs have seniority dates prior to August 19, 1951, with one dating back to 1925.

The defendant Brotherhood alleges that at no time prior to the commencement of this suit did any of the plaintiffs register any complaint or seek to process any grievances under the provisions of the contract above referred to and that insofar as any claim is attempted to be asserted by any of the plaintiffs against the defendant Brotherhood, the Brotherhood says that the same are barred by the terms and provisions of the said above referred to contract.

Third Defense.

If the plaintiffs have any claims against defendant Brotherhood, which defendant Brotherhood specifically denies, such claims are barred by the statute of limitations of one year.

Fourth Defense.

If the plaintiffs have any claims against defendant Brotherhood, which defendant Brotherhood specifically denies, such claims are barred by the statute of limitations of three years.

Fifth Defense.

If the plaintiffs have any claims against defendant Brotherhcod, which defendant Brotherhood specifically denies, such claims are barred by the statute of limitations of six years.

Sixth Defense.

The complaint shows that the only contract provision involved is one wherein the craft represented by the defendant Brotherhood and the defendant Railway have agreed that colored trainmen are not to be employed as conductors, flagmen, baggagemen or yard conductors. Defendant Brotherhood alleges that each of the plaintiffs sought and accepted employment by the defendant Railway under such aforesaid agreement containing such provision and have worked under said contract and accepted wages and other benefits thereunder and did not, prior to the institution of this suit, voice any objection to such provisions or conditions of said contract of employment and that each of the plaintiffs is therefore barred by his laches in not seeking relief seasonably and, therefore, plaintiffs' claims are too stale to now be heard.

Seventh Defense.

The complaint shows that the only contract provision involved is one wherein the craft represented by the defendant Brotherhood and the defendant Railway have agreed that colored trainmen are not to be employed as conductors, flagmen, baggagemen or yard conductors. Defendant Brotherhood alleges that each of the plaintiffs sought and accepted employ-

ment by the defendant Railway under such aforesaid agreement containing such provision and have worked under said contract and accepted wages and other benefits thereunder and did not, prior to the institution of this suit, voice any objection to such provisions or conditions of said contract of employment and that plaintiffs having acquiesced in their employment relationship as set forth in said contract are estopped from asserting the demands set forth in their complaint.

Eighth Defense.

The complaint shows that the only contract provision involved is one wherein the craft represented by the defendant Brotherhood and the defendant Railway have agreed that colored trainmen are not to be employed as conductors, flagmen, baggagemen or yard conductors. Defendant Brotherhood alleges that each of the plaintiffs sought and accepted employment by the defendant Railway under such aforesaid agreement containing such provision and have worked under said contract and accepted wages and other benefits thereunder and did not, prior to the institution of this suit, voice any objection to such provisions or conditions of said contract of employment and that plaintiffs having acquiesced in their employment relationship as set forth in said contract have waived any right to make the demands set forth in their complaint.

Ninth Defense.

The defendant Brotherhood alleges that the contract between it and the defendant Railway, herein-

above referred to, resulted from negotiations between defendants Brotherhood and said Railway. Insofar as said contract prohibited colored trainmen from being used as conductors, flagmen, baggagemen or yard conductors, it expressed a policy of the defendant Railway which, so far as this defendant is aware, was not contrary to law just as said contract in Article 26(b) prohibited white men from being employed as porters; therefore, as to the defendant Brotherhood, the complaint fails to set forth a claim upon which relief can be granted.

Tenth Defense.

The defendant Brotherhood alleges that this proceeding does not constitute a justiciable controversy in that the remedy of the plaintiffs, if any, is before the National Railroad Adjustment Board as provided under the Railway Labor Act.

Eleventh Defense.

1.

Answering paragraph 1 of the complaint, defendant Brotherhood admits that plaintiffs are Negro citizens but denies that the defendants have been guilty of any discriminatory practices or agreements and otherwise denies the allegations of said paragraph 1.

2.

Answering paragraph 2 of the complaint, the defendant Brotherhood denies that Leroy Erwin and George Nelson are in the employment of the defend-

ant Railway and the defendant Brotherhood also denies that there are any justiciable questions of law or fact involved in this complaint but otherwise admits the allegations of said paragraph 2.

3.

The defendant Brotherhood admits the allegations of paragraph 3 of the complaint.

4.

Answering paragraph 4 of the complaint, the defendant Brotherhood admits the allegations thereof, except, that the contract governing the employment of road conductors of defendant Railway was entered into between the Order of Railway Conductors and Brakemen and defendant Railway rather than between the defendant Brotherhood and the defendant Railway.

5.

Answering paragraph 5 of the complaint the defendant Brotherhood alleges that although the defendant Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, is a subordinate lodge of the defendant Brotherhood, it has no jurisdiction whatever over the property of the Central of Georgia Railway Company or any of its employees and is therefore in nowise involved in the matters and things made the basis of this suit.

6.

Answering paragraph 6 of the plaintiffs' complaint, the defendant Brotherhood alleges that the defendant

Lester L. Watkins is Local Chairman for Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, having jurisdiction only over yardmen of the Louisville & Nashville Railroad Company at Birmingham, Decatur, Anniston and Gadsden and that he therefore has no jurisdiction whatever over the property of the Central of Georgia Railway Company or any of the employees of that company and is not in anywise involved in the matters and things made the basis of this suit.

7.

Answering paragraph 7 of the complaint, defendant Brotherhood denies the allegations thereof and avers that the said Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, does not have any member who is an employee of the Central of Georgia Railway Company and said subordinate lodge of the defendant Brotherhood has no jurisdiction whatever over the property of the Central of Georgia Railway Company or its employees and that the Local Chairman for Birmingham Lodge No. 590 as set forth in the answer of defendant Brotherhood to paragraph 6 of the complaint and that, therefore, the said subordinate lodge of the defendant Brotherhood and the said defendant Lester L. Watkins are not representative of the membership of the defendant Brotherhood insofar as the issues in this case are concerned.

8.

Answering paragraph 8 of the complaint, the defendant Brotherhood alleges that qualifications for

membership in said Brotherhood are contained in Section 110 of the constitution of the defendant Brotherhood and a true and correct copy of the said provision of the constitution of the defendant Brotherhood will be made available to the plaintiffs and their counsel and to the Court at the trial of this case.

9.

Answering paragraph 9 of the complaint the defendant Brotherhood admits that it is the bargaining representative of the Trainmen's Craft under the provisions of the Railway Labor Act except as to road conductors of defendant Railway. Defendant Brotherhood further admits that it negotiated all agreements that have been negotiated with the defendant Railway Company concerning said craft except as hereinabove noted. The allegations with reference to various agreements are too vague to enable this defendant to answer further.

10.

The defendant Brotherhood denies the allegations of paragraph 10 of the complaint.

11.

The defendant Brotherhood denies the allegations of paragraph 11 of the complaint.

12.

Answering paragraph 12 of the complaint the defendant Brotherhood admits that it has entered into

other and supplemental agreements with the defendant Railway but it denies the other allegations contained in said paragraph.

13.

Answering paragraph 13 of the complaint the defendant Brotherhood denies that said agreements and practices were intended to operate to injure the plaintiffs. On the contrary, the defendant Brotherhood alleges that the plaintiffs were greatly benefitted by said agreements, as they have enjoyed advantages of increases in wages and improvements in working conditions to the same extent that members of the defendant Brotherhood obtained such benefits, which the defendant Brotherhood alleges plaintiff probably would not have otherwise obtained.

14.

Answering paragraph 14 of the complaint the defendant Brotherhood admits that the plaintiffs' seniority rights as yard switchmen or brakemen are of great importance to them but for want of sufficient information it can neither admit or deny whether employment with the defendant Railway constitutes plaintiffs' sole means of livelihood. Defendant Brotherhood further shows unto the Court and alleges that the only seniority rights to which plaintiffs or other employees of the defendant Railway are entitled spring from their employment contracts and are restricted by such contracts and defendant Brotherhood denies that plaintiffs' seniority rights are property rights.

15.

Defendant Brotherhood admits the allegations of sub-paragraphs 15(a) and 15(b) of the complaint. Further answering these two sub-paragraphs defendant Brotherhood shows unto the Court and avers that this prohibition against using Negroes as conductors, flagmen, baggagemen or yard conductors has been one of the conditions of employment with defendant Railway since prior to December 1, 1919.

16.

Answering sub-paragraph 15(c), defendant Brotherhood admits that the Negro plaintiffs are not eligible for assignment as flagmen, baggagemen, or conductors. Defendant Brotherhood also admits that many of the plaintiffs have long periods of seniority as brakemen or switchmen but shows unto the Court and avers that in accordance with their labor contract, they accrued seniority only as brakemen or switchmen and have never accrued any seniority as a flagman, baggageman or conductor. The Negroes' seniority as a brakeman or switchman does not entitle them to any claim for the position of flagman, baggagemen or conductor. Any allegations in sub-paragraph 15(c) to the contrary are herewith denied.

17.

Answering sub-paragraph 15(d) defendant Brotherhood admits that under the aforementioned contract the Negro Trainmen are permitted to accrue seniority only as brakeman in road service and that they do not have any claim to seniority as flagman. Defendant

Brotherhood denies that the position of flagman is more desirable than the position of brakeman and to the contrary the defendant Brotherhood alleges that with the advent of diesel locomotives and attendant long trains the position of brakeman is more desirable than the position of flagman and that each receives the same rate of pay.

18.

Answering sub-paragraph 15(e) of the complaint, the defendant Brotherhood shows unto the Court and avers that there is no agreement or practice between the defendant Brotherhood and the defendant Railway which prohibits a colored switchman from serving in the position of so-called "lister-switchman", involving "booking or flagging". Defendant Brotherhood admits that defendant Railway has refused such positions to colored switchmen, the grounds of refusal being that they were not qualified to serve and not that the contract forbade it.

19.

Answering sub-paragraph 15(f) of the complaint, defendant Brotherhood admits that under the aforesaid contract Negro brakemen are not entitled to the position of flagmen and accrue no seniority in such positions; whereas white brakemen may be promoted to flagmen and accrue seniority as such. Defendant Brotherhood denies that the position of flagman is more desirable than the position of brakeman. The pay is the same. Defendant Brotherhood can neither admit nor deny the allegations in said sub-paragraph 15(f) with reference to Negro brakemen with greater

seniority being displaced from their jobs as brakemen as such allegations are too vague and ambiguous to permit answer. By way of explanation defendant Brotherhood shows unto the Court and avers that a white brakeman has no more claim to a brakeman's job than does a Negro brakeman and that the assignment is based purely upon brakeman seniority. No Negro brakeman has ever been displaced from his job by a white brakeman with less seniority. Allegations to the contrary are herewith denied.

20.

The defendant Brotherhood denies the allegations of paragraph 16 of the complaint.

21.

Answering paragraph 17 of the complaint the defendant Brotherhood denies that it has been guilty of any unlawful agreements or any unlawful practices or any conspiracy whereby the plaintiffs and other Negro Trainmen have been denied rights or other privileges and whereby the plaintiffs have been unlawfully displaced from positions to which they would otherwise be entitled.

22.

Answering paragraph 18 of the complaint, defendant Brotherhood admits that O'Dell Jones is a Negro citizen and that he has been a brakeman on the Columbus Division of the defendant Railway Company with seniority as such since September 12, 1925. His residence is unknown to this defendant. Defendant Brotherhood denies the remaining allegations.

23.

Answering paragraph 19 of the complaint, defendant Brotherhood admits that plaintiff Dock Rutledge is a Negro citizen, and has been employed on the Columbus Division by the defendant Railway Company as a switchman with seniority as such since December 22, 1936, and not 1930. Defendant Brotherhood denies the remaining allegations of said paragraph.

24.

Answering paragraph 20 of the complaint, defendant Brotherhood admits that plaintiff A. C. Cain is a Negro citizen of the United States and that he has been employed as a brakeman since May 5, 1936, on the Macon Division. His residence is unknown to this defendant. The defendant Brotherhood denies the remaining allegations thereof.

25.

Answering paragraph 21 of the complaint, defendant Brotherhood admits that Major Threat is a Negro citizen and that he has been employed on the Columbus Division as a switchman by defendant Railway Company with seniority as such since January 23, 1930. His residence is unknown to defendant. Defendant Brotherhood denies the remaining allegations thereof.

26.

The defendant Brotherhood denies the allegations of paragraph 22 of the complaint.

27.

The defendant Brotherhood denies the allegations of paragraph 23 of the complaint.

28.

The defendant Brotherhood denies the allegations of paragraph 24 of the complaint.

29.

The defendant Brotherhood denies the allegations of paragraph 25 of the complaint.

30.

Answering the allegations of paragraph 26 of the complaint, the defendant Brotherhood shows unto the Court and alleges that the same does not require answer as it merely alleges an erroneous conclusion of law.

JACKSON, RIVES, PETTUS & PETERSON and
WAYLAND K. SULLIVAN,
By AL. G. RIVES,
Attorneys for Brotherhood of Railroad Trainmen.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Brotherhood of Railroad Trainmen, do hereby certify to the Court that I served a copy of the above and foregoing answer of the defendant Brotherhood

of Railroad Trainmen on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 16th day of October, 1954.

AL. G. RIVES,
Attorney for Brotherhood of Railroad Trainmen.

ANSWER OF DEFENDANT, BIRMINGHAM LODGE NO. 590, BROTHERHOOD OF RAILROAD TRAINMEN.

Filed October 18, 1954.

(Title Omitted.)

Now comes the defendant, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, and files this its answer to the plaintiffs' complaint and respectfully shows unto the Court as follows:

First Defense.

The complaint fails to state a claim against Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, upon which relief can be granted.

Second Defense.

The defendant Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, for answer to plaintiffs' complaint admits that it is a subordinate lodge of the defendant Brotherhood of Railroad Trainmen, an unincorporated association, but this defendant alleges

that it has no jurisdiction over the properties of the Central of Georgia Railway Company or any of its employees and that no employee of the Central of Georgia Railway Company is a member of said Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, and that this defendant has no knowledge or information concerning the matters and things made the basis of the plaintiffs' complaint and is not involved in the controversy referred to in plaintiffs' complaint and that, therefore, the plaintiffs' complaint does not state a claim against this defendant upon which relief can be granted and this defendant prays that it be discharged as a party defendant to the action.

Third Defense.

For further answer to plaintiffs' complaint, the defendant Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, adopts as its answer the answer filed by the defendant Brotherhood of Railroad Trainmen.

JACKSON, RIVES, PETTUS & PETERSON and
WAYLAND K. SULLIVAN,
By AL. G. RIVES,
Attorneys for Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, do hereby certify to the Court that

I served a copy of the above and foregoing answer of the defendant Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 16th day of October, 1954.

AL. G. RIVES,
Attorney for Birmingham
Lodge No. 590, Brotherhood
of Railroad Trainmen.

ANSWER OF DEFENDANT, LESTER L. WATKINS.

Filed October 18, 1954.

(Title Omitted.)

Now comes the defendant, Lester L. Watkins, and files this his answer to the plaintiffs' complaint and respectfully shows unto the Court as follows:

First Defense.

The complaint fails to state a claim against the defendant Lester L. Watkins upon which relief can be granted.

Second Defense.

The defendant Lester L. Watkins, for answer to plaintiffs' complaint, alleges that he is Local Chairman for Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, having jurisdiction only of yard men of the Louisville & Nashville Railroad Company

at Birmingham, Decatur, Anniston and Gadsden and that he has no jurisdiction whatever over the properties of the Central of Georgia Railway Company or any of its employees and that this defendant has no knowledge or information concerning the matters and things made the basis of plaintiffs' complaint and is not involved in the controversy referred to in the plaintiffs' complaint and that, therefore, the plaintiffs' complaint does not state a claim against this defendant upon which relief can be granted and this defendant prays that he be discharged as a party defendant to the action.

Third Defense.

For further answer to plaintiffs' complaint, the defendant Lester L. Watkins, adopts as his answer the answer filed by the defendant Brotherhood of Railroad Trainmen.

JACKSON, RIVES, PETTUS & PETERSON and
WAYLAND K. SULLIVAN,
By AL. G. RIVES,
Attorneys for Lester L. Watkins.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Lester L. Watkins, do hereby certify to the Court that I served a copy of the above and foregoing answer of the defendant Lester L. Watkins, on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 16th day of October, 1954.

AL. G. RIVES,
Attorneys for Lester L. Watkins.

JURY DEMAND.

Filed October 18, 1954.

(Title Omitted.)

Now come the defendants, Brotherhood of Railroad Trainmen, an unincorporated association, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, an unincorporated association, and Lester L. Watkins and hereby demand a jury trial.

JACKSON, RIVES, PETTUS & PETERSON and
WAYLAND K. SULLIVAN,
By AL. G. RIVES,
Attorneys for Defendants, Brotherhood of Railroad Trainmen, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, and Lester L. Watkins.

Certificate as to Service.

I, Al G. Rives, as one of the attorneys of record for Brotherhood of Railroad Trainmen; Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen; and Lester L. Watkins, do hereby certify to the Court that I served a copy of the above and foregoing demand for jury trial on Messrs. Cooper, Mitch & Black, attorneys of record for the plaintiffs on the 16th day of October, 1954.

AL. G. RIVES,
Attorney for Defendants, Brotherhood of Railroad Trainmen; Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, and Lester L. Watkins.

AMENDMENT TO ANSWER OF CENTRAL OF GEORGIA RAILWAY COMPANY.

Filed October 20, 1954.

(Title Omitted.)

Now comes the defendant, Central of Georgia Railway Company, and for further answer to Paragraph 22 of the plaintiffs' complaint as last amended, says that the following named plaintiffs who were recently added as parties plaintiff are employees of the defendant in its Savannah Division:

Date of employment.

Green Wilcox—brakeman, January 13, 1943.
Bill Davis—brakeman, March 16, 1945.
Moses S. Smith—brakeman, May 24, 1937.

George Nelam—brakeman (the defendant does not have a George Nelson on its payroll) January 29, 1937.

The name of Leroy Erwin is not on this defendant's roster of employees. A Leroy Ervin was discharged by this defendant on May 20, 1953 for being in an intoxicated condition when he reported for duty on May 12, 1953.

JOHN B. MILLER and
W. H. SADLER, JR.,
Attorneys for Defendant, Central of Georgia Railway Co., a Corp.,
(S.) JOHN B. MILLER,
(S.) W. H. SADLER, JR.

10/20/54. Amendment to answer is allowed.
H. H. GROOMS.

CLERK'S COURT MINUTES.

United States District Court, Northern District of Alabama, Southern Division.

Odell Jones, et al., for and in behalf of themselves and others similarly situated,

vs.

Central of Georgia Railway Company; Brotherhood of Railroad Trainmen; Local Lodge No. 590, Brotherhood of Railroad Trainmen; and Lester B. Watkins.

Present: Hon. H. H. Grooms.
File No. 7760 Sou. CA.
Court Reporter: A. B. Hale.

This case having duly come on for a hearing or trial on the 19th day of October, 1954 upon complaint and answers and there appearing Cooper, Mitch & Black for plaintiff, Sadler & Sadler; John B. Miller, Jackson, Rives, Pettus & Petterson for defendant; and thereupon the issues raised having been duly presented, argued and submitted to the Court, it was, on October 20, 1954, decided and adjudged by the Court as follows: findings of fact, conclusions of law, and judgment granting injunction and reserving question of damages to be entered for the plaintiffs and against the defendants, Central of Georgia Railway Company and Brotherhood of Railroad Trainmen; other parties defendant to be discharged.

WILLIAM E. DAVIS,
Clerk,
By DAN STRONG,
Deputy Clerk.

Birmingham, Alabama.

Filed Dec. 8, 1954.

In the District Court of the United States for the Southern Division of the Northern District of Alabama.

Odell Jones; Dock Rutledge; A. C. Cain; Major Threat, et al., for and in behalf of themselves and others similarly situated, Plaintiffs,

vs. Case No. 7760.

Central of Georgia Railway Company, a corporation; Brotherhood of Railroad Trainmen, an unincorporated association; Local Lodge No. 590, Brotherhood of Railroad Trainmen, an unincorporated association; and Lester L. Watkins, Defendants.

Birmingham, Alabama,
October 19, 1954.

Before: Hon. H. H. Grooms, Judge.

Appearances:

Messrs. Cooper, Mitch & Black, appearing for the Plaintiffs.

Messrs. John Miller and Wm. H. Sadler, Jr., appearing for the Central of Georgia Railway Company.

Messrs. Al G. Rives and J. Kirkman Jackson, appearing for the Brotherhood of Railroad Trainmen and Lester L. Watkins.

* * * * * * * *

The Court:
Gentlemen are the parties ready in the case of Jones vs. Central of Georgia and the Brotherhood?

Mr. Cooper:
Plaintiff is ready, Your Honor.

Mr. Miller:
Defendant, Central of Georgia is ready, Your Honor.

Mr. Rives:
The other Defendants are ready, Your Honor.

The Court:
I notice there has been a jury demand in here by the Brotherhood of Railroad Trainmen. Apparently this is not the type of case in which you would be entitled to a trial by a jury. At least, Judge Mullins held that in the Mitchell case.
Is there a motion to strike the demand for jury trial?

Mr. Cooper:
We would so move if the Court would allow us to do so.

The Court:
The motion to strike the jury demand will be granted.

Mr. Rives:
May we reserve an exception as to the Brotherhood of Railroad Trainmen, Birmingham Lodge 590, and the Defendant Watkins, separately and severally?

The Court:
Yes.

Mr. Rives:
All the Defendants except the Defendant Railroad. We don't have to put that in writing?

The Court:
No, he is making a note of it right now. Did you demand a jury trial too?

Mr. Sadler:
No, sir. I just wanted to introduce Mr. John Miller.

The Court:
We are glad to have you.

Do you wish the witnesses sworn? Let's have the witnesses sworn at this time. Are these all parties?

Mr. Cooper:
Yes, sir, they are all parties, and they will be actually our witnesses also.

Mr. Rives:
Did you have anyone else?

Mr. Cooper:
There is one other witness who is a party, but we anticipate using him tomorrow. I explained to counsel for the Defendants that he was unable to get off from the job on which he is assigned at the present time, today. He can be here in the morning. If we finish our case, we will try to move along as fast as we can, and I would like to, if possible, if it don't

inconvenience these people too much, to put him on in the morning. But he is not present now, Mr. Clerk.

The Court:
All right.

(Witnesses were sworn.)

The Court:
Are all of these witnesses parties in the case?

Mr. Sadler:
These two gentlemen, Mr. Collins and Mr. Sease will be witnesses of the Central of Georgia.

The Court:
Do you wish the rule in the case? Is the rule requested?

Mr. Cooper:
It is immaterial to us, because our people are all parties anyway. They would be here.

Mr. Sadler:
It is all right with us for them to be here.

The Court:
The rule is not requested, and the witnesses may remain in the Courtroom.

Gentlemen, you may state your case at this time.

Mr. Cooper:
If the Court pleases, this is a bill in equity for an injunction, declaratory judgment and incidental dam-

ages, brought as a class action by the Negro trainmen on the Central of Georgia.

It is based on the theory that the collective bargaining representative, the Brotherhood, which I will refer to as the Brotherhood, has failed in its fiduciary duty fairly to represent these people, and instead has, together with the Railroad, entered into contracts, practices and understandings which discriminate against these men because of their color, and that such discrimination amounts to a violation of the statute on which this Court's jurisdiction is based, the Railway Labor Act, and by virtue of which this Brotherhood is the bargaining agent.

We ask that the Court declare these discriminatory practices illegal and void, and enjoin their future enforcement, and order, as was done in the Mitchell case, that the continuous service or seniority of these colored trainmen be respected in like fashion as that of the white men.

I might say the thrust of our case is directed at two situations, which we expect the evidence to disclose.

First, although formerly Negroes were utilized as flagmen, they are now not permitted to work as flagmen. The flagman is the trainman that works on the rear end of the train. As the result of that, such practices as this have developed, an older colored man working on the front end of a train as a brakeman will have his position taken away from him by a senior white man who could serve as a flagman, and who elects to work as a man on the front of

the train as a brakeman, permitting a junior white man to work as flagman, while a man that had greater seniority because of his color is displaced. That is on the train service, on the over-the-road service.

In the yard, formerly the switching duties were performed by a white foreman and two colored switchmen. Since the younger white men have decided to bid for the jobs of switchmen in the yard, the practice has developed under which they describe one of those switching jobs as being in the nature of flagging, booking and flagging, and they don't permit a colored man to bid on that job, although he may have the greater seniority, except of course in emergencies, when they have to use a colored man, at which time they permit him to do it.

That, simply put, is our problem.

There is one additional job, that of baggage man on some of the trains, to which trainmen promote, and to which we think these men are entitled to promote if their seniority entitles them to do so, and when I say "seniority", I mean continuous service, and as to which we think Your Honor is familiar.

There is mention in the contract of these individuals being barred because of color from the job of conductor. That is not, as a matter of fact, an issue in this proceeding. None of these men, so far as I know, are making any claim to the job which is,—to any job which is a part of supervision, which is called a yard conductor if in the yard, and conductor on the road.

As I said, we are directing our attack on the practice which has cut down and diminished the seniority of these men on the jobs of flagmen, switchmen, and in some instances baggage men.

As Your Honor has indicated, the Supreme Court has said in three cases, the Tunstall, Steele, and Graham case, that these facts give rise to a cause of action in equity, with a right to an injunction to protect the Plaintiffs from further discrimination because of their color, and such incidental damages as they may have suffered as a result of the discrimination.

Now, with respect to the damages, as I indicated to Judge Lynne when we first filed the complaint, it is our request of the Court that we not take the evidence in toto here on the issue of damages for a large number of men, but we request of the Court that after the case is decided, if we prevail, that the Court retain jurisdiction and assign or appoint a Master, as Judge Mullins did, who can then go into the rather lengthy problem of individual claims for damages.

The Court:

I don't hardly get the purpose of the complaint. You stated that you were not complaining about using the respective trainmen. Will you state that again?

Mr. Cooper:

Yes, sir. I am not a railroad man, but I have tried to become as familiar as I can with these terms.

These men are, generally speaking, trainmen. The man who works on the front end is called a brakeman. The man who works on the rear end of the train is called a flagman.

Now, the contract states on its face that no Negro can be promoted to serve as flagman, unless of course he had seniority as of 1919. Formerly colored trainmen did serve as flagmen, but under this practice they are not permitted to work the rear end of the train.

Now, what happens is this, in some instances, a colored trainman will have greater seniority than a white trainman, and would rather bid on the flagman's job. He is denied that. He is limited to such available jobs as there are on the braking end, which requires more work, the switching is all done by the man on the front, working from the front end of the train. Some of the older colored men would rather be on the flagging end.

In addition to that, what happens, you see a white brakeman can promote to a flagman, and then on up to conductor. A colored man stops as brakeman.

Well, with a reduction in forces an older white man who has seniority is entitled to work either as a flagman or a brakeman. He will choose to work as a brakeman on the front end, and will displace a colored trainman, colored brakeman. That will in turn permit a junior white man to go to the rear end and work as flagman, although the colored man who has been displaced has more seniority, because the colored man is limited to claiming the job on the front

end, so that by agreement between the two white men the older white man works on the front end, and elects to do that. That permits a junior white man, with less seniority, to go to the rear end of the train and displace the old colored man.

The old colored man from the front end then either goes on the street, goes on the extra board, or is sent out of town, or is unemployed.

That, generally, is what we expect to show.

Mr. Miller:

The Central of Georgia is the first named Defendant, and I will endeavor to state the defense of the Central to this complaint.

The answer of the Central sets out as one of the defenses a failure to state a claim against the Central of Georgia.

The second defense is a plea of the contractual statute of limitations which is described in the bargaining agreement, which is the contract of employment between the Plaintiff and the Central of Georgia. There are two contractual provisions which limit the time within which claims shall be made, Your Honor. One provision which we will later introduce into evidence, says that any claim involving seniority must be brought or must be presented in writing to the Company within one year from the time that the claim arises.

The second contractual limitation is a provision that any claim for denial of a particular job that

comes open must be presented within 60 days from the time that the basis for that claim arises.

Then the Central also pleads the Alabama statute of limitations, without prescribing which statute, but we are aiming at the one year statute.

We also have filed a plea of laches against the claims of the Plaintiffs, based on this proposition, the contractual provisions involving the last stage of the complaint that Mr. Cooper outlined to you, the proposition of an old white brakeman or flagman being in the job of brakeman, and thereby displacing a colored man and letting a junior white man take the rear end job of flagman.

That contractual provision went into effect in 1919, and this is the first time that there has been a formal complaint or any complaint that we know of as to that contractual provision. Therefore we say that the complainants are barred by laches.

Now, getting down to the meat of the defense of the Central of Georgia, Your Honor, it is, simply stated, this: The Central of Georgia, under the Railway Labor Act, can deal with no employee representing this craft or any member of these groups of crafts, except the sole bargaining agent which is the Brotherhood of Railroad Trainmen.

In other words, the Central cannot entertain any negotiations with any individual Plaintiff in this case or any individual member of the craft for a change in the bargaining agreement. And there are severe penalties if we endeavored to do so. We must deal

with the exclusive bargaining agent, which is the Brotherhood of Railroad Trainmen, and the Central has done so.

As a result of collective bargaining between the Brotherhood of Railroad Trainmen and the Central in 1919, at a time when the Central, as well as the other railroads of the Nation were under Governmental control, during World War I, this contractual provision of which they complain first became a condition of employment for this particular craft.

Your Honor, each of the Plaintiffs, each complainant in this case, was employed subsequent to the date that this provision first went into the contract. And this contractual provision has remained a condition of employment governing the crafts that these Plaintiffs are in, since 1919. The wording actually has been practically verbatim.

We take the position then that the Central of Georgia has bargained in good faith, and that this condition of employment first went in in 1919. We take the position, Your Honor, that these complainants applied for employment with the Central of Georgia as brakemen or as switchmen, and their rights, as far as the Central of Georgia is concerned, are governed by and limited by the provisions of the contract of employment.

For example, Your Honor, as far as the Central of Georgia is concerned, we are very proud of our colored employees. But from a legal standpoint, we owe our colored employees no rights or duties or responsibilities other than as provided by the con-

tract of employment. And when these colored Plaintiffs applied for employment, one condition of their employment was this provision of which they are now complaining.

We take the position, so far as the Central of Georgia is concerned, that they are governed by the contract. Let's assume it is unfair, which we deny, so far as the Central of Georgia is concerned, it is still a condition of employment; and if they didn't like the condition of employment, they didn't have to apply for a position with the Central. I don't want in any sense to appear to be cold-blooded, but I am stating the position of the Central.

I think one of the major things involved is the complaint about the lister switchmen. This is a type of switchman that is delegated by the yard foreman who heads a switching crew in a yard and who is called a yard foreman, with the responsibility of keeping a record of the various cars, the time they are placed, the car numbers, and that sort of thing. That is not prescribed by the written bargaining contract. The lister switchman's position is a practice that has developed on the Central of Georgia.

We take the position that we will not deny to any switchman, white or colored, the position of lister switchman if he is qualified to assume that duty. And we are willing to so stipulate as a part of this record that we will not deny to any of the Plaintiffs in this action, or to any colored or white switchman the position of lister switchman if the man is qualified to serve in that position.

We would like to point out then in presenting our defense that the yard foreman, who is sometimes called yard conductor, and the conductors on freight trains and on passenger trains are promoted. Those positions are restricted to white employees. They are promoted from the ranks of white brakemen, flagmen or baggage men. And I take it that the Plaintiffs in this action are not seeking to have the contract changed so that they would have the right to be promoted to either yard foreman, or conductors on the line of road, freight or passenger.

I would like to add this, Your Honor, that it is the position of the Central that these colored Plaintiffs were employed as brakemen. We will show that the application forms show that they applied for the position of brakeman, and that since the time that they have been employed by the Central of Georgis as brakemen, they have never been discriminated against within their classification as brakemen.

I don't believe even that they will contend that as brakemen they have ever been denied employment and such employment given to a white man who had less seniority as a brakeman.

Now, it is true, Your Honor, that a white employee, when he is employed, takes a dual seniority, as a brakeman, flagman and baggage man at the time he is employed, and the colored employee, when he is employed, he is employed solely as a brakeman. He does not under the contract, or under any other provision, he does not obtain any seniority or any right to the position of flagman or baggage man.

So it is true, and we certainly do not deny that white employees, when they are employed for line of road duty, have a dual seniority, flagman, baggage man and brakeman, whereas the colored employee is employed solely as a brakeman. But, we emphasize that that was the condition of employment at the time that they were employed.

Mr. Rives:

May it please the Court, some of our witnesses arrived after Court opened. I want to introduce to the Court Mr. L. E. Chester. He is Deputy President of the Brotherhood of Railroad Trainmen, and Mr. B. G. Byington, Chairman of the Central of Georgia Brotherhood of Railroad Trainmen, and Mr. Watkins, who is Local Chairman for the Brotherhood of Railroad Trainmen on the L&N Railroad Company, who is also a Defendant.

Now, Your Honor, in order to not unduly take up the time of the Court or be guilty of repetition, the Defendant Brotherhood of Railroad Trainmen in its answer to the Plaintiffs complaint has interposed each and every defense that has been interposed by the Defendant, the Central of Georgia Railway Company, as outlined by Mr. Miller. And there is no need for me to restate those defenses, because the Central of Georgia and the Brotherhood each rely on those defenses that Mr. Miller stated to the Court.

However, we were a little more specific in pleading the statute of limitations of the State of Alabama, in that we specifically rely on the statute of limitations of one year, which was what Judge Mullins relied on in the Mitchell case.

The Court:

That was so far as damages were concerned, under the Circuit Court of Appeals ruling. Does it go beyond that in this case?

Mr. Rives:

As a matter of fact, Your Honor, we are relying on the contractual statute of limitations that Mr. Miller discussed. They are charging us with a conspiracy and wrongful conduct, which is in the nature of a tort, rather than any so-called breach of contract. So it seems to me like that limitation would apply to the whole action, therefore, that they are claiming in the complaint. That is our contention.

We are also putting in the statute of three years and six years, just in case Your Honor should not agree with us in our contention.

Mr. Miller stated that the Central of Georgia had pleaded the defense of laches. The Brotherhood of Railroad Trainmen also plead that defense. But we also plead estoppel and waiver.

In other words, we contend that these parties sought and accepted employment by the Central of Georgia Railway Company as switchmen and brakemen under the contract that was then and there in force and effect, and we expect the evidence to show that the contract that was in force and effect at the time, that each one of these Plaintiffs applied for employment and accepted employment, under a contract which contained the same provisions that are in the present contract; that they worked under that contract, that they accepted the benefit of the contract;

they accepted the compensation, and any improvements in working conditions and so forth, all under the contract. And yet they never did prior to the inception of this suit make any protest or voice any objection, and that they are thereby estopped to come in here and make the claims that they have made in this complaint.

In another defense we say by reason of those same facts they have waived any such rights that they are claiming in their complaint.

Now we have reinterposed as a defense this proposition, Your Honor, that they should have exhausted their remedy under the Railway Labor Act through the National Railroad Adjustment Board before they should be permitted to come to this Court, and we expect the evidence, or we make this contention, if the evidence should disclose—we are not saying it will disclose, but if it should disclose any grievance that they have got against the Central of Georgia or the Brotherhood, it is such a type of grievance that should be and could be processed by them through the National Railroad Adjustment Board. And in connection with that, Mr. Cooper, when we were down here the other day, cited the Tunstall case as saying the Supreme Court has already thrown that out. We haven't so read the Tunstall case. We don't believe it has ever been brought to the attention of the Supreme Court that was in that case. Any one or more of them have the right to process their grievance all the way through the National Railroad Adjustment Board. As I say, although we deny they have any grievance, just grievance, that if there is any it is a type of grievance that they should have

processed it before they should be permitted to come to this Court.

We concur in what Mr. Miller has stated to the Court, that these men applied for a certain type of work with the Central of Georgia Railway Company, and we deny that they have been discriminated against as they have claimed in their complaint.

And we might say to Your Honor that we too rely upon the Steele case.

As to the Defendant, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, and the Defendant, Lester L. Watkins, we feel that they have no business being Defendants in this case. The Birmingham Lodge No. 590 of the Brotherhood is located here in Birmingham. It has no jurisdiction whatever over the properties of the Central of Georgia Railway Company; there is no employee of the Central of Georgia Railway Company that is a member of that Lodge. They had nothing to do with the negotiation of this contract; they know nothing about it, they just have no knowledge and no jurisdiction whatever over anything pertaining to the case. And the Defendant, Lester L. Watkins, who lives in Birmingham, and is Local Chairman of the Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen, having jurisdiction over yard men of the Louisville & Nashville Railroad Company at Birmingham, Decatur, Anniston, and Gadsden, he has no jurisdiction whatever over the properties of the Central of Georgia Railway Company, and has no jurisdiction whatever over the employees of the Central of Georgia Railway Company. He knows nothing about anything involved

in this case. And we say those two Defendants should be discharged because they are just improperly in the case.

The Court:
Is there any reply to that?

Mr. Cooper:
I think not, in detail, Your Honor. I would just like to state there are a couple of questions that perhaps I didn't cover. First, the evidence unquestionably I think will disclose that these Plaintiffs are not members of the Brotherhood, and have never been permitted because of their color to be members.

The law makes the Brotherhood their representative, and imposes upon the Brotherhood and the Railroad, assuming the benefits of contracts with the Brotherhood, to deal fairly for and on behalf of these men. We are not complaining about inability to file a grievance, we are attacking the contract itself. This contract is illegal, and we expect that the evidence will show that, by application of the illegal contract, these men have been discriminated against. This is a continuing situation. They are suffering today the very discrimination that we are complaining about. If it is a tort it is a continuing tort. They have never been in position to process anything through the Brotherhood itself. They are complaining as of today of things being done to them today, things that I have detailed.

I think that is about it. I am ready to proceed.

The Court:

I notice Mr. Rives there is a limitation referred to in the contract. Do you contend that is a limitation on the time in which this suit can be brought or a limitation incident to bringing this suit or is that a limitation on filing a grievance? Of course you can't shorten the statute of limitations in Alabama on contractual provisions. Of course you can have provisions that limit the time in which a lawsuit can be filed, or claim for damages asserted. Those provisions are vital and precedent to maintaining the action. Or, in the case of certain insurance policies, it might even bar your right of recovery.

What is the real gist of those two limitation provisions that you referred to that? Are they limitations with respect to the time within which time grievances shall be filed?

Mr. Rives:

Any complaint or grievance that they have against the carrier is supposed to be filed in compliance with these provisions of the contract. If they don't do it, then they have no right to proceed further.

You take the time claim, Your Honor. If through some mistake or otherwise a man is entitled to take a job over there, and he is denied that right, he will go in and file a time claim. He says I was entitled to go out on this run on October 16, but I was not permitted to do it, I was not permitted to go out on that run on October 16. He files a time claim and he claims of the Railroad Company the time that he would have made on that run.

But if he doesn't file that claim within the time provided in this contract they don't pay it, that's the end of it. All the railroads operate under such a system. They all have time limits within which grievances and complaints can be made, and if they don't do it they are out of luck, and the Railway Labor Act as I understand it authorizes the carrier and the bargaining representative to have such provisions in their working agreements. And if the employee that has such a complaint or such a grievance does not represent his claim within that time, why it is out.

The Court:

Of course their contention with respect to this is that this is not a grievance, that they are attacking the contract itself. I believe that is correct.

Mr. Cooper:

Yes, sir, that is correct.

The Court:

All right, you may call your first witness.

Mr. Cooper:

Judge, I would like to state, so that the record will be clear on it, that as I understand from the hearing on the motions, the Brotherhood has waived any objections to venue and service, and that letter is in the file. I want this record to show that.

The Court:

Yes, I think that is true.

Mr. Cooper:

I believe in their answer the Brotherhood did not give us a copy of the Brotherhood Constitution but said they would make one available, and when convenient I would like an opportunity to see that.

Mr. Rives:

They were supposed to have sent the things to me from Cleveland by air mail. I am supposed to have gotten it already, but it will arrive during the day I think.

Mr. Cooper:

All right, fine.

Mr. Rives:

It should have arrived yesterday.

Mr. Cooper:

One other thing, and I don't mean any implications at all by this, but this is a rather unusual type of litigation, and I have spoken to counsel for the Railroad. I am certain that no type of penalty of any kind will be imposed on these people who have come to participate in this. And I say that not by way of implying it would be done, but to thank Mr. Miller for that assurance that he has given me to that effect.

The Court:

I might state I think the procedure here is the procedure indicated by Judge Mullins in the Mitchell case. We won't go into the question of damages at this time.

Mr. Cooper:
That is correct.

The Court:
If you are not entitled to relief, we wouldn't have to go any further. If you are entitled to relief by way of damages, then we can go into that by a Special Master, to determine those payments, if any.

Mr. Cooper:
All right. I think that would probably certainly be best, and we have no objection to it.

The first man I would like to call is Odell Jones.

ODELL JONES, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:
Q. Would you state your full name, please?
A. Odell Jones.
Q. Odell Jones?
A. Yes, sir, my full name.
Q. Do you work for the Central of Georgia Railroad, the Defendant in this case?
A. Yes, sir.
Q. What is your job?
A. I was hired as a freight brakeman.
Q. When were you hired by the Central?
A. February 12, 1925.
Q. Have you been a railroad man, working for railroads, ever since 1925?

A. I have.

Q. What job do you hold right now?

A. I hold the job out of here called the Childersburg job turnaround.

Q. The Childersburg job?

A. Yes, sir.

Q. What job on the crew do you work?

A. I work as brakeman, head brakeman.

Q. As brakeman?

A. Yes, sir.

Q. What are the duties of a brakeman?

A. Be familiar with train orders, know the train orders, switch cars, throw switches.

Q. Do you know what the flagman does on that train?

A. Yes, sir.

Q. That you work on?

A. Yes, sir.

Q. Are you familiar with what he has to do?

A. Yes, sir.

Q. Can you do the work that he does?

A. I can.

Q. Have you ever had to do the work that he does?

A. Well not—

Mr. Sadler:

We would like to move to exclude the answer to the question of can he do this. I think that would be a conclusion on the part of the witness. The answer came so quickly we didn't have an opportunity to object.

The Court:

I sustain the objection to that.

Q. What does the flagman have to do?

A. Practically he looks out for the rear end. In other words, he do what the conductor tells him to do back there. He is supposed to know his job and do what the conductor tells him to do.

Q. Have you ever done the work that a flagman does?

A. Yes, sir, I have done it, but I haven't had no regular job doing it.

Q. In other words, from having done it, is it your feeling that you could do the work of a flagman?

A. I know I could do it. I took the same examination that the other trainmen took.

Q. You, as a colored trainman, are not permitted to bid on the job of flagman, are you?

A. No, sir.

Q. Now the BRT, Brotherhood, that is a Defendant in this case, they are the representative for all the trainmen, including yourself, isn't that so?

Mr. Rives:

We object to that. The contract is the best evidence.

The Court:

I believe they stated that was the case, didn't they?

Mr. Cooper:

They admitted that. The answer admits that the Brotherhood represents these people as the statutory collective bargaining agent.

The Court:

Is there any dispute about that?

Mr. Rives:
No, sir.

Q. Are you a member of the Brotherhood?
A. No, sir.
Q. Have you ever been permitted to be a member of the Brotherhood?
A. No, sir. I had an application, which they never did accept.
Q. Has any colored brakeman to your knowledge ever been permitted to join the Brotherhood of the Central?
A. No, sir, none has joined it.
Q. Has the Brotherhood ever let you or any other colored brakeman that you know about vote, for instance, for officers of the Brotherhood?
A. No, sir.
Q. Have they ever let you vote for the kind of contract they were going to sign with the Central?
A. No, sir, they never did issue me one.
Q. They have never even given you a copy of the contract?
A. No, sir.
Q. Do you know what the job of baggage man is on the train operated by the Central?
A. Yes, sir, it is to keep a record of your baggage, of the packages, to keep the record and the address where it is from, where it is going, and where you delivered it to.
Q. And do you know how to do that?
A. Yes, sir.
Q. You can read and write, of course?
A. I can.
Q. Now at the present time you have a regular assigned job, do you?

A. Yes, sir.

Q. Now at the present time are there any colored brakemen or trainmen who at the present time, or in the past, have been unable to work?

A. Yes, sir.

Mr. Sadler:

I object to that.

Mr. Cooper:

Just a moment—

Q. Have been unable to work because they were not permitted to bid on jobs of flagman?

A. Yes, sir, they have.

Mr. Sadler:

I object to that as calling for hearsay on the part of the witness.

The Court:

If he knows.

Mr. Cooper:

I am asking him only what he knows.

Q. Do you know that to be so?

A. Yes, sir.

Mr. Sadler:

How does he know it, Your Honor?

Mr. Cooper:

You can examine him.

Mr. Sadler:
I don't want improper testimony in to start with.

The Court:
I overrule the objection if he states he knows.

Q. How is it that because some colored men are not permitted to bid on the job of flagman that they would be out of work or rolled off the job?

A. The senior white man could displace the colored man. The junior brakeman takes the rear end, so the colored man is not permitted to go to the rear end of the train, so he is just out of a job.

Q. When you say the senior white man displaces the colored man, do you mean displaces the colored brakeman on the front end of the train?

A. Front end of the train.

Q. That has happened, to your knowledge?

A. Yes, sir, it is still happening every day.

Q. Mr. Miller stated, and I am sure it is a fact, that a white brakeman who becomes a flagman keeps his seniority as a brakeman. He has a dual seniority, is that correct?

Mr. Miller:
That is correct.

The Court:
All right.

Mr. Cooper:
That would also be true of a white brakeman who went up to baggage man, wouldn't it? He would keep his seniority as a brakeman or flagman when he goes up to baggage man?

Mr. Miller:
That is correct.

Mr. Cooper:
We are trying this before Your Honor without a jury, and I don't want to belabor the point, but when Mr. Miller states that, that is in the character of a stipulation.

Mr. Miller:
Oh, yes, we so stipulate.

Mr. Cooper:
Then I won't go into it. Thank you, sir.

Q. Do you know whether or not you make more money as a flagman than you would as a brakeman?
A. No, it is all the same, on the same scale of pay, flagman and brakeman and baggage master.
Q. Can you explain why a baggage master's job or flagman's job would be better in your opinion than a brakeman's job?
A. You take when a man gets old, he can't get around on the front end, it's not safe for him like it is, you know, to be like where he would get hurt less at the back, on the rear end or in the baggage car.
Q. Does the man on the front end have more physical work to do than a man on the rear end?
A. He do.
Q. What kind of work does he have to do that the man on the rear end doesn't have to do?
A. Well, he has switches to throw. The man on the rear don't have to handle them. He has crossings to flag going through cities and towns, and the man

on the rear end don't even have to think about getting up to see about them.

Mr. Cooper:
I believe that's all. Mr. Rives, are you agreeable to these stipulations that I have made with Mr. Miller? Do you have any objection to them?

Mr. Rives:
I don't know. I will have to consult my clients about that.

Mr. Cooper:
All right. I can ask him questions if there is any objection to the stipulation.

Mr. Rives:
I don't know whether there is or not. I haven't talked to them.

The Court:
All right, you may interrogate the witness.

Q. Is it correct that a white brakeman who promotes to the job of flagman or baggage master keeps his seniority as a trainman?
A. He do.
Q. And the white man who becomes baggage man keeps his seniority as a flagman and brakeman?
A. He do.
Q. A colored man is permitted to have seniority and exercise his seniority only on the front end job of brakeman?
A. He do, yes, sir.

Mr. Cooper:
I believe that's all.

The Court:
You mean by that that the senior flagman, for instance, a man who is a white man senior on the rear can come up front?

Mr. Cooper:
Yes, sir.

The Court:
In other words, he can go either way?

Mr. Cooper:
Yes, sir, that's just what he testified to, that a senior white man can come up to the front end and roll off an older colored man that is younger than the flagman but older than a young white man who then goes to the rear of the train and takes the flagging job. You have a younger white man working on the rear end and an older white man on the front end, and the old colored man not working.

The Witness:
Could I make a little statement?

Mr. Cooper:
No. If the Court wants you too, all right.

The Court:
I think it best for you to confine your answers to the questions.

Q. If there is anything that you have stated that you want to clear up, go ahead.

A. Just one little thing I would like to bring out here. When I was hired on the Central of Georgia, they wasn't hiring white brakemen on there, they was hiring flagmen.

Mr. Rives:
I can't hear.

The Witness:
When I was employed by the Central they were not hiring white brakemen, they were hiring colored brakemen and white flagmen, but later they made them brakemen, everybody was a brakeman. That's where this come about. There wasn't no flagman coming to the head end at that time, but when they got better, he was a brakeman, everybody is supposed to be a brakeman. I'm entitled to what other trainmen is. I don't want to be no conductor or anything like that, but I think if other brakemen have a right to come to the front end and roll me off, I think I ought to have a right to get somewhere.

Mr. Rives:
I move to exclude that.

The Court:
Yes. That is a conclusion. I will sustain that.

When you were employed they were not employing white brakemen?

The Witness:
No, sir, not at that time.

The Court:
They were all white flagmen?

The Witness:
White flagmen.

The Court:
No white brakemen?

The Witness:
No white brakemen.

The Court:
Since that time they have employed —

The Witness:
Trainmen, they call it trainman.

The Court:
They call them trainmen, and the white trainmen have taken over some of the jobs of the colored brakemen?

The Witness:
That is correct.

The Court:
All right, gentlemen, you may proceed.

Mr. Sadler:
Do you wish us to proceed first?

The Court:
I guess the Central of Georgia, since they are the first named Defendant, should go first.

Cross Examination.

By Mr. Sadler:

Q. Odell, I want to ask you a few questions.

A. Yes, sir.

Q. How old are you?

A. I am around about fifty-eight or nine, fifty-nine.

Q. Fifty-nine?

A. Yes, sir.

Q. And you have worked for the Central for approximately 29 years?

A. Yes, sir, 29 years this past 12th of last month.

Q. You were about 30 years old when you first began working for them; that would be right, wouldn't it?

A. Somewhere along there.

Q. Could you read and write at that time?

A. I could.

Q. And you filled out an application for employment?

A. Yes, sir.

Q. And on the application you stated you were applying for the position of brakeman?

A. Brakeman.

Q. Now can you give me the names of the brakemen on the Columbus Division today that were working for the Central as brakemen in 1925?

A. Well, yes, sir.

Q. How many are there?

A. There is two ahead of me, Homer Hogg, and Jim Banks.

Q. Two ahead of you?

A. Yes, sir.

Q. The two men ahead of you were working for the Central at the time you were employed in 1925?

A. They were.

Q. Am I correct in saying that during the time that you have been working for the Central, some 29 years, that no brakeman, that no person that has been hired as a brakeman has stepped over and become senior to you as a brakeman?

A. Senior to me?

Q. That's right.

A. Yes, sir, since that time they have.

Q. Who is it?

A. Mr. Richardson, he got, he is a senior brakeman. You mean took my job?

Q. That's right.

A. Yes, sir.

Q. Who has been given seniority right ahead of you in the classification of brakeman?

A. Well, no one.

Q. Nobody?

A. No, sir.

Q. That's right. The two people that are senior to you as brakemen today were working for the Company when you started working in 1925?

A. They were.

Q. And people that have been employed as brakemen since that time are junior to you on the seniority roll as brakeman, is that right?

A. That's correct.

Q. So that in so far as your employment as brakeman is concerned, there has been no change in your status during the period of 29 years with respect to seniority, that is correct, isn't it?

A. Well not exactly correct, for I have been misplaced when I shouldn't have been misplaced on the same crew. I had been misplaced by senior men, and younger men working on the same crew, when the senior man could have misplaced him.

Q. You mean somebody that is junior to you has displaced you on the roll?

A. They haven't displaced me, but the senior man displaced me, that's my trouble now.

Q. But that man had seniority ahead of you?

A. The one that took my job did, but the man on the crew didn't.

Q. So that you have never in the 29 years been displaced by a man that is junior to you, have you?

A. No, sir, not junior to me.

Q. You stated that you took the examination for flagman.

A. I stood the same examination all trainmen stand, we all stood the same.

Q. I asked you if you took the examination for flagman?

A. I took the examination for trainman.

Q. You took the examination for brakeman, did you not?

A. Since that time I have took what other trainmen took.

Q. You took an examination when you were first employed for brakeman?

A. I was hired for brakeman.

Q. You were hired for brakeman?

A. That's right.

Q. You knew at that time when you were hired that that is what you were being hired for?

A. I did.

Q. You took the examination for brakeman?

A. Yes, sir.

Q. Since that time have you taken any other examination?

A. Yes, sir.

Q. When did you last take an examination?

A. About 3 years ago.

Q. What was that examination that you took?

A. We took a physical examination and the rules examination.

Q. So you took a physical examination and the rules examination?

A. Yes, sir.

Q. All the brakemen took the same examination?

A. Yes, sir.

Q. And you took it in your classification as brakeman for the Central, that's right, isn't it?

A. It said trainmen.

Q. You have been carried on the roll all the time as a brakeman?

Mr. Cooper:

We object to that. We have no control over what they describe these men as on their roll.

The Court:

Overruled.

Mr. Sadler:

All right.

Q. That is correct, you have been shown as brakeman, haven't you?

A. They changed it to trainman.

Q. I want to ask you, haven't you been carried on the roll as brakeman all during these years?

A. Yes, sir, I've been called a brakeman, that's what I was hired for.

Q. And you were hired as a brakeman. Now, Odell, you say when you were employed in 1925 that we had no white man as brakemen on the Central of Georgia?

A. There was none on my Division.

Q. Did you have anybody, any white employees, working as brakemen?

A. On work trains.

Q. On work trains?

A. On work trains.

Q. You had no over-the-road employees that were white brakemen when you were employed?

A. Not when I went to work.

Q. How about in yard service?

A. They had switchmen.

Q. You had white switchmen?

A. Yes, sir.

Q. How long was it after 1925 that white brakemen were employed?

A. Well, it was along in the—so far as I can remember, along in the early thirties when they went to running white brakemen on the head end. I will correct that. It was in the twenties, I would like to correct that, if I can.

Q. What is it?

A. It was along in the late twenties, along about '26 or '27.

Q. Along in 1926 or '7?

A. Yes, sir.

Mr. Sadler:

I believe we have no further questions.

The Court:

All right.

By Mr. Rives:

Q. Jones?

A. Yes, sir.

Q. I believe that you stated that the job of baggage man pays more than the job of trainman?

A. No, sir.

Q. Didn't you make that statement?

A. No, sir.

Q. As a matter of fact, the job of baggage man pays less than the job of brakeman, doesn't it?

A. What I said was they are all about on the same scale, is what I said.

Q. About on the same scale?

A. Same scale of pay, that's right.

Q. The baggage man and the brakeman, they are road men, aren't they?

A. Yes, sir.

Q. They get paid on a per hundred mile basis?

A. That's right.

Q. And I will ask you if a baggage man doesn't get $8.95 per hundred miles, whereas a brakeman gets $13.83 per hundred miles?

A. Well, I'm not square just on that, because I haven't been keeping up with it.

Q. What is your best recollection about it? Is that your recollection about the wage schedule of those two jobs?

A. Well, my recollection is, of course, the passenger train is a cheaper rate like that. It is according to what kind of train he is baggage master on. If he is on a mixed train he gets more than he does on a passenger train.

Q. Don't you know that the pay of a baggage man in all instances is substantially less than the pay of a brakeman? You know that, don't you?

A. Well, it is pretty—I figure it's pretty close to the same scale. I wasn't so familiar with it. In fact, I haven't paid any attention.

Q. Don't you know that the highest baggage man's job is $9.71 per hundred miles, don't you know that?

A. I didn't say I just know the scale of it.

Q. Don't you know that the lowest brakeman's job is about $13.40 per hundred miles, isn't that right?

A. That's about right.

Q. That's right?

A. About the brakeman. I haven't checked with you on the baggage master, because that hasn't been my class of duty, I didn't know anything about that scale.

Q. You stated you have worked as a flagman but didn't actually hold the classification of flagman?

A. That's right.

Q. You said you did the work of flagman?

A. Yes, sir.

Q. I believe you say the work of flagman is in effect easier than the work of a brakeman?

A. Yes, sir, like now.

Q. What Division are you on?

A. Columbus Division.

Q. Where do you run to and from?

A. Well my territory is between Birmingham and Columbus.

Q. Do they use steam locomotives or Diesel locomotives?

A. Well, they have Diesels.

Q. Diesel locomotives?

A. Yes, sir.

Q. And it is usually operated at the head of the train, isn't it?

A. Yes, sir.

Q. You haul long trains, don't you?

A. Yes, sir, they are all long trains.

Q. About how many cars on an average?

A. They average around, in this yard, 115.

Q. 115 cars on an average?

A. Yes, sir.

Q. You, as the head brakeman, you ride up in the engine with the engineer and fireman, don't you?

A. That's where I ride.

Q. And you are enclosed in this Diesel, with a great big windshield, just like riding in an automobile or bus, is that right?

A. That's right.

Q. You have a nice comfortable seat there, don't you?

A. When I am riding I do.

Q. You ride up there?

A. That's right.

Q. Right with the engineer and fireman?

A. That's right.

Q. It is a nice upholstered seat, isn't it?

A. Yes, it's nice.

Q. And you are protected from the weather?

A. That's right.

Q. And your job is to sort of look back down this train of 115 cars to see whether there are any hot boxes or any brake rigging dragging or anything wrong back there, is that right?

A. That's right.

Q. You look back to the rear end?

A. That's right.

Q. Now you know what slack action is, don't you?

A. Yes, sir.

Q. There is considerable slack action in 115 car trains, isn't there?

A. That's right.

Q. There is about a foot of slack in each car?

A. Well, something like that.

Q. Up in the engine, the engineer and the fireman, and the brakeman, they don't feel much slack action, do they?

A. No, sir, not like they do on the rear.

Q. Back there on the caboose, on the rear, they feel the slack action, don't they?

A. They do.

Q. It is pretty rough back there, isn't it?

A. Very rough, yes, sir.

Q. The flagmen are frequently injured back there from the slack action, aren't they?

A. That's right.

Q. The quarters up there on the head end of the Diesel locomotive are much more comfortable than the quarters back on the caboose, aren't they?

A. Well, I wouldn't think so. We have so much more trouble.

Q. It is much more comfortable in the engine than in the caboose, isn't it?

A. I wouldn't think that it was for me.

Q. You are just speaking for yourself, aren't you?

A. Yes, sir.

Q. Now then back on the rear end the flagman has to frequently get off in all kinds of weather, or whenever the train comes to a stop outside of yard limits and go back a half mile or mile to protect the rear of his train, doesn't he?

A. That's right.

Q. Until they get ready to go, and then he has to come back and get on the caboose and go ahead?

A. That's right.

Q. Now up there as brakeman on the engine, you don't have any paper work to do, do you?

A. Nothing but keep tab, you have a lot of work to do, you have to make a little list and keep tab on what you do.

Q. That is just what you make for your own information?

A. Yes, sir.

Q. When you did this job of flagging back in the back, who was your conductor?

A. I would be on the road, and sometimes something happened to the flagman, and he got left or something, and I would stay back there.

Q. Does the flagman make out a lot of written reports on the request of the conductor?

A. On the request of the conductor.

Q. The conductor?

A. He makes out what the conductor tells him.

Q. Wheel reports, various written reports?

A. In some cases, but that's usually the conductor's work, but the flagman helps out.

Q. The flagman is supposed to do whatever the conductor instructs him to do?

A. That's right.

Q. It is common practice for the conductor to have the flagman make out wheel and other written reports, is that right?

A. That's right.

Q. Who was your conductor on these trips that you made as flagman?

A. I haven't made a trip flagging.

Q. You haven't made a trip flagging?

A. When a fellow get left or some thing happened to one.

Q. Just in an emergency?

A. An emergency.

Q. Some fellow that was called didn't show up, and they had to grab somebody to take the job, and put you back there?

A. No, something happened out on the road before you get in.

Q. You mean he got hurt?

A. Got hurt or get left, sometimes.

Q. Get hurt or get left, they would call you in an emergency to come in and sort of take over, is that right?

A. I would be already on the crew.

Q. You would be a brakeman?

A. Yes, sir.

Q. The conductor would have you go back there because the flagman was disabled?

A. That's right.

Q. Or had been left?

A. That's right.

Q. Those were the instances in which you worked as a flagman?

A. That's right.

Q. You didn't have to make out any written report on those occasions?

A. No, sir.

Q. The conductor did that?

A. That's right, he done that. In fact, he didn't ask me to do it.

Q. Now, as a matter of fact, up on the head end, you say you throw switches?

A. Throw switches and flag crossings.

Q. The man on the rear end, he has to throw switches too, doesn't he?

A. Yes, sir.

Q. When you pull into a passing track he has to get back there and reline the switch to the main line?

A. That's right.

Q. There is just about as much switching, switch throwing on the rear end as on the head end, isn't there?

A. Yes, sir.

Q. There is switch throwing on both ends?

A. You have switching to do on the head end, you don't have to do that on the rear end.

Q. As a matter of fact, there is not as much switching there now as there used to be, they have automatic switches, somebody in a tower throws a switch, you sit up on the Diesel and somebody in the tower throws the switches?

A. In some cases.

Q. That is true on your Division, isn't it?

A. Some parts of the Division.

Mr. Rives:

That's all.

Mr. Cooper:

Just a minute. I don't believe we have any further questions.

The Court:

You stated when you first were employed there were no white brakemen?

The Witness:

No, sir, not at that time.

The Court:

Then they reclassified them and began calling them trainmen?

The Witness:

Trainmen.

The Court:

Was it at that time that they began to employ white men as brakemen?

The Witness:
Since that time.

The Court:
Since that time?

The Witness:
Yes, sir.

The Court:
That was about 1926 or '27 when that began?

The Witness:
Yes, sir.

Mr. Rives:
May I ask one or two other questions?

The Court:
Yes, sir.

By Mr. Rives:
Q. When you were employed they were not employing any colored flagmen, were they?
A. No, sir.
Q. And they were not employing any colored baggage men at that time?
A. No, sir.
Q. They were employing colored brakemen?
A. Brakemen?
Q. That's right.
A. Yes, sir.
Q. And that's all?
A. That's right.

Mr. Rives:
All right.

The Court:
Do they have any colored flagmen at this time?

The Witness:
No, sir.

Mr. Miller:
In answer to your question, did he say this change in classification from brakeman to trainman occurred in 1927?

The Court:
He said about that time.

Mr. Miller:
About 1927. Thank you, sir.

The Witness:
I would like to correct the question that I gave to you. I was thinking that you asked me did they have any colored flagmen employed at that time.

The Court:
Said what?

The Witness:
Mr. Sadler asked me at that time was they running any colored flagmen.

Mr. Sadler:
Whether they employed any colored men as flagmen when you were employed.

The Witness:
Since that time or before that?

Mr. Sadler:
At the time you were employed.

The Witness:
No, sir.

The Court:
The two were distinct, in other words, white men were doing the flagging job and the colored men the braking?

The Witness:
That's correct.

By Mr. Sadler:
Q. Jones, do you mean to say that prior to about 1927 the Central of Georgia did not employ any white brakemen?
A. '26 or '27, I mean on the Columbus Division. I don't know about the other.
Q. On the Columbus Division?
A. On the Columbus Division.
Q. You restrict that statement to the Columbus Division?
A. Columbus Division.

Mr. Sadler:
Now, may I ask another thing, Your Honor?

The Court:
Yes.

Q. Isn't it a fact that you and other colored brakemen voted a strike ballot in about 1946, which concerned a strike regarding working conditions?

A. I have never voted one against the Company I was working for.

Q. How is that?

A. I have never voted a strike ballot against the Company I was working for.

Q. Did you vote against a strike?

A. No, sir, I haven't voted at all.

Q. You had the right to, didn't you?

Mr. Cooper:
I object to that. That calls for a conclusion.

The Court:
I sustain the objection.

Mr. Sadler:
We except, Your Honor.

The Court:
Is there anything further from this witness?

Mr. Cooper:
No, sir.

The Court:
We will take a 15 minutes recess at this time.

(A recess was had.)

Mr. Cooper:
Major Threat.

MAJOR THREAT, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. These people here have got to hear you. What is your name, please?

A. Major Threat.

Q. You work for the Central of Georgia Railroad, the Defendant in this case, don't you?

A. Yes, sir.

Q. Where are you working now?

A. I am working on the west yard, Columbus, Georgia.

Q. On the west yard in Columbus, Georgia?

A. Yes, sir.

Q. Is that on the Columbus Division?

A. Yes, sir.

Q. How long have you been in railroad work?

A. Ever since 1909, September 9.

Q. How far back does your seniority go with the Central?

A. I think as near as I can come at it to 1925. I was employed as a brakeman at that particular time.

Q. I believe you said you are working as a switchman now?

A. Now, yes, sir.

Q. How far back does your seniority as a switchman go? I believe it is admitted in the answer, that that is admitted—

A. I think in '29.

Mr. Cooper:

I believe it is 1930, isn't it? Right Mr. Miller?

The Witness:
One or the other.

Mr. Cooper:
January something, 1930.

The Court:
Is a brakeman and switchman interchangeable, is that term interchangeable?

Mr. Cooper:
No, sir, a switchman as I understand is a yard employee and works in the yard.

The Witness:
Yes, sir.

Mr. Cooper:
There are many similarities, but I understand the fact that he works in the yard makes it a switchman.

Mr. Miller:
In our answer we admit Major Threat has seniority as a switchman on the Central of Georgia since January 23, 1930. That is the date shown on the seniority roster too.

The Witness:
That is probably so.

Mr. Cooper:
Are you willing to stipulate that Mr. Rives?

Mr. Rives:
Sure.

Q. Did you ever work on the road as an employee before you became a switchman?

A. Yes, sir.

Q. How did you come to be a switchman, do you remember?

A. Yes, sir, I was hired as a brakeman, and was used in the yard in case of emergency, and the depression came on and it got so severe until the switchmen began to kick against us road men coming into the yard, and my trainmaster said that we would have to take one side or the other or come out.

Mr. Sadler:

I object to that, back in 1930. This is somewhat informal, I realize.

The Court:

All right.

Mr. Cooper:

We are not offering that as proof, but it is merely a statement of what happened.

The Court:

A preliminary matter?

Mr. Cooper:

Yes, sir.

Q. Let me ask you this question, you elected to come into the yard from the road and to work as switchman in the yard, is that right?

A. Yes, sir.

Q. About when was that, do you remember?

A. Around about January, '30 I think, as he said.

Q. Working in the yard as you are now as a switchman, what work do you do, what does your job require you to do?

A. As they have it arranged now, the only thing is to ride boxcars, is all.

Q. Is there a job in the yard which is called flagging or booking?

A. Yes, sir.

Q. Are you permitted to bid on any job that is called flagging or booking?

A. No, sir.

Q. Is there any colored switchman in the yard permitted to do that?

A. No, sir.

Q. Now when you first came into the yard as a switchman, did they call one of the jobs booking and flagging, or did they call them both switching?

A. Both switching.

Q. Were both of the switching jobs on a crew in the yard held by colored switchmen?

A. Yes, sir.

Q. And you worked with what, a white yard foreman?

A. Foreman, yes, sir.

Q. How is it, or tell the Court what happened when one of these jobs came to be called a booking and flagging job?

A. This had gone on for a matter of two or three years, along, as near as I can get at it, about '39, before I detected the difference. And then they began to call these jobs booking and flagging, and I said, well I says "Can't we bid on those jobs?" One of the BRT men told me, said, "No, you can't bid on them jobs, them jobs is for white."

Mr. Rives:
We object to any conversation.

The Court:
I sustain the objection.

Q. Do you remember who that was that said that?
A. No, sir, I don't, not exactly, I does not.
Q. Have the colored men ever been permitted to bid on those jobs?
A. No, sir.
Q. How does a white man who gets into the yard get a job of booking and flagging?
A. When I was hired he was hired as a switchman, that's the way he was hired, and we all done the same work.
Q. Now, at the present time or in recent years have any white men been hired to do the job that is called booking and flagging, who had little seniority or less seniority than the colored switchman?
A. They only was hired for switchman, they was hired for switchman.
Q. Have any white men been allowed to work on the job of booking and flagging who have less seniority than the colored switchmen in the yard?
A. Yes, sir.
Q. Can you name some of them?
A. We have a couple now in the yard on jobs that us colored could hold now. There is Mr. Murray, and Mr. Dunham.
Q. Mr. Murray and Mr. Dunham?
A. Yes, sir.
Q. They are young white men?
A. Yes, sir.
Q. Do they have less seniority than you?

A. Yes, sir.

Q. Are you permitted to bid on the jobs that they have?

A. No, sir.

Q. Are there any other colored men, switchmen, permitted to do that?

A. No, sir.

Q. Is there any difference in the work that those fellows do and the work that you do?

A. No more than booking is all.

Q. Tell the Court in your own words just what they do when they book.

A. The only thing they do is to keep a record of the cars that is moved from place to place, and when they catch up with that then they are joined in and help us do the switching. Other than that, he doesn't do it as long as he has got some work to do.

Q. Do you know how to do that?

A. Yes, sir.

Q. Have you ever done it?

A. I have.

Q. You have done the same work that these white men do?

A. Yes, sir.

Q. Tell the Court how it happened that sometimes you have done that work.

A. Well now in one particular case that we had a solid colored crew, and they passed the rule that the foreman must make out his time, not allow any of us to help to make his time out, and he had to go to the office to do it, and he give me the work sheet and told me, he said "You book these cars from the yard over to the roundhouse and give me the sheet when I come back."

Q. Did you do it?

A. I did so.

Q. Did they say you had done it wrong?

A. No, sir, I never heard a word from it.

Q. Do you know Mr. Woods, a Mr. Woods that works in the yard there?

A. Yes, sir.

Q. Will you state whether or not during 1953 you attempted to bid on the job, or to roll Mr. Woods off of a job in the yard?

A. I did.

Q. Tell the Court just what happened in that case.

A. My job was pulled off, and I goes to the yard and asks them, that I wanted to be off on a Tuesday or Friday, I believe it was, and Mr. Woods held that particular job. I said I want to be on that job. The job that I claimed Mr. Woods held, and they said "You can't get that job." I said "Why?" He said "That's a white man's job."

Mr. Rives:
We object to that.

Q. Who said that?

Mr. Rives:
It isn't shown who he was talking to.

The Court:
Who were you talking to?

Q. Who were you talking to?

A. Talking to the yard clerk.

Q. The yard conductor?

A. In other words, the crew dispatcher.

Q. Is he the man that assigns jobs?

A. He's the one that handles those jobs.

Mr. Rives:
Is it the yard conductor or crew dispatcher?

The Witness:
He is that now.

Mr. Rives:
They are different jobs, aren't they?

Mr. Cooper:
Just a minute, I'll clear that up.

Q. Who was the man you were talking to at that time?

A. I was talking to Mr. Patrick, I think it was.
Q. What job did he hold?
A. Mr. Patrick holds the crew dispatcher's job in the office.
Q. Crew dispatcher's job in the office?
A. Yes, sir.
Q. Is he the man that assigns men to the crews in the yard?
A. Yes, sir, he has that authority.
Q. He is the man that made that statement to you?
A. Yes, sir.
Q. You didn't get that job?
A. No, sir.
Q. Is that right?
A. No, sir.
Q. Did you know how to do the work on that job?
A. Yes, sir.
Q. Do you know a Mr. House?
A. Yes, sir.

Q. Would you state whether or not in July, of 1954, this past July—

A. Yes, sir.

Q. —you had an occasion to try to bid on his job?

A. Yes, sir.

The Court:

Whose job is that now?

Mr. Cooper:

Mr. House.

The Witness:

Mr. House.

Q. Where were you working then, were you working on the hill job?

A. Yes, sir.

Q. Were you rolled off of that job?

A. The job was pulled off.

Q. The job was pulled off?

A. Yes, sir.

Q. Tell us what happened?

A. I went to the yard office and told them that I wanted—

Q. Who did you speak to now?

A. I was speaking to the crew dispatcher at that particular time and I told him, I said "I am ready to go to work." He said "All right, where do you want to go?" I said "Well, I wants to go to the 7:00 o'clock job West Yards." All right. I disremember what shift he was pulling, what number job he was pulling, but I asked for his job, and they told me that I couldn't have it, because Mr. Woods job and that job required white men.

Q. Did you have more seniority than Mr. Woods?

A. Yes, sir. I learned him how to switch boxcars.

Q. He came in as a new man while you were working there?

A. Yes, sir.

Q. You "learned him" how to do his work?

A. Yes, sir.

Q. Did you have more seniority than this other man that you mentioned, Mr. Woods?

A. Yes, sir.

The Court:

Mr. House, you mean?

Mr. Cooper:

House was one and the other was Woods. I think I had forgotten to ask him if he had more seniority than Mr. Woods.

Q. Are you a member of the Brotherhood?

A. No, sir.

Q. Have you ever been permitted to join the Brotherhood?

A Never have.

Q. Have they ever given you copies of their contract?

A. They haven't, no, sir.

Q. Have you ever had an opportunity or been permitted to vote for their officers?

A. No, sir.

Q. Or to vote on their contract?

A. No, sir.

Q. Now, I believe you stated a moment ago that on some occasions you do the job, work the jobs which are called flagging or flagging and booking. How did those emergencies arise when they would permit you

or one of the other colored switchmen in the yard to work those jobs?

A. When they doesn't have a white man available, then we are all right for that job.

Q. If all of the white men are absent?

A. Yes, sir.

Q. Then they let you work the job?

A. Yes, sir.

Q. But they won't let you bid for them as a regular job?

A. No, sir.

Q. Now, do you know a Mr. Gaffney, a white man working in the yard?

A. I do.

Q. Can you state whether or not during the past year, 1953, I believe he was permitted to continue working on the job and a Negro switchman named Ralph Smith was pulled off?

A. Yes, sir.

Q. Do you know that happened?

A. Yes, sir.

Q. Describe briefly in your own words to the Court what happened in that case.

A. Because at that particular time we had three men on the brickyard job, which was a foreman and three helpers, and the business fell off so much until they seed fit to pull a man off of that job.

The Court:

What job was that?

The Witness:

Brickyard job.

Mr. Cooper:
Let me clear that up.

The Court:
What were you doing at the brickyard job?

The Witness:
Switching.

The Court:
Switching?

The Witness:
Yes, sir.

The Court:
Was the white man switching too?

The Witness:
We had a white man on there booking and flagging.

The Court:
Oh, a white man booking and flagging?

The Witness:
That's what they called the job.

Q. The brickyard job is one of the jobs that the crews in the yard handle, is that correct?
A. That's right, yes, sir.
Q. That's the way you fellows refer to it?
A. Yes, sir.
Q. What happened?
A. They seen fit to pull one man off, and I said to Ralph Smith, I told him, I said "Well, look like there

ain't going to be nobody but me and you down here." He said "Yes, it look that way, if it works that way." I said "Well, I hope is works that way."

In a day or two the job was put up, and they pulled one man off of that particular job and he had to go up for assignment. It happened to be Ralph Smith. I'm older than him, the reason I'm left there. They left Mr. Gaffney on that. He is a much younger man than me or Ralph. That's what happened to that job.

Q. Both you and Smith had seniority on Mr. Gaffney?

A. Yes, sir.

Q. But they took Smith off?

A. Yes, sir.

Q. Did he lose time as a result of that?

A. I think he lost about seven days, I think.

Q. Do you know Otis Ray?

A. Yes, sir.

Q. Can you state whether or not to your knowledge he has tried to bid on a bulletin job in your yard and been denied it?

A. Yes, sir.

Q. When did that happen, about, in your best recollection?

A. About the 20th.

Q. The 20th?

A. Yes, sir.

Q. Of this month?

A. No, not the 20th of this month.

Q. It is not necessary to give the actual date. Was it recently?

A. Yes, sir, recently.

Q. Tell the Court what happened in that man's case.

A. This job, as far as I can come to it, as close as I can get at it, it was a white man already on this job, and they added another man to this job, if I am not wrong, and they bulletined the job for a man booking and flagging, whcch wouldn't allow us colored to bid on that job. But Otis Ray bid on the job, and they wouldn't let him have it.

Q. Was it work that Ray had done, or that Ray knew how to do?

A. Sir?

Q. Could Ray do that work?

A. Yes, sir.

Q. What did that work or job involve, what would he have had to do if he had been put on that job?

A. Not anything but ride boxcars.

Q. That is just what he has been doing, and what you are doing?

A. That's right.

Q. But as a colored switchman he was denied that job?

A. Yes, sir.

Q. Although he had greater age or seniority with the Company?

A. Yes, sir.

Q. Now do you recall whether in this past July the Company pulled off jobs?

A. The hill job, yes, sir.

Q. Were you working that job at that time?

A. Yes, sir.

Q. How many men were working in the crew?

A. Three of us.

Q. Who was your foreman, was Mr. Bozeman your foreman?

A. No, sir, Mr. Gibson.

Q. Mr. Gibson?
A. G. C. Gibson.
Q. What happened on that job?
A. They pulled that job off.
Q. Where did you go then?
A. I asked to go to the East Yard.
Q. Where did they assign you?
A. They assigned me to the West Yard.
Q. Did the officials who made that assignment tell you why you were not sent to the East Yard?
A. The crew dispatcher told me that, at that time, I think Mr. House held that job.
Q. I see.
A. That I couldn't go down there on that job because that was a white man's job, that I couldn't go on it.

The Court:
That is the job in the East Yard you mean?

The Witness:
East Yard.

Q. Is that when you went to the 7:00 to 3:00 turn?
A. Yes, sir.
Q. Were you working under Mr. Bozeman then as your foreman?
A. No, I went to Mr. Bozeman first.
Q. This is when you went to Mr. Bozeman?
A. Yes, sir.
Q. Did you ever do any booking for Mr. Bozeman?
A. Yes, sir, I did it one time.
Q. Tell the Court what happened there.
A. He had to go to the office to make out his time, to make our time out, and he pulled out of his pocket

and give me the work sheet. He said "Book these cars from the yard over to the roundhouse for me while I'm gone."

Q. Did you do it?

A. I did it.

Q. Did he complain about it?

A. He hasn't said a word, haven't opened his mouth.

Q. Did you have any trouble doing that?

A. No, sir, not a bit in the world.

Q. You knew how to do it?

A. Yes, sir, sure did.

Q. Where are you working now?

A. I'm still on the 7:00 o'clock job.

Q. West Yard?

A. West Yard, from 7:00 to 3:00.

Q. Didn't the number four job open up again in August?

A. I disremember whether it did or not.

Q. Do you recall where Henry Johnson is working now?

A. You mean Henry Denson?

Q. Is he a colored switchman?

A. Yes, sir.

Q. Where is he working now?

A. He is on 11:00 to 7:00.

Q. Do you have seniority over him or does he have seniority over you?

A. I have seniority over him.

Q. If your seniority, your age with the Company, were given effect, would you have a right now to be back on the number four job as the senior man?

A. Yes, sir.

Q. Would you be working on the Denson job that Denson is doing, that booking and flagging, or who would be doing it?

A. I would be doing it, I'm the older man.

Q. And Denson could continue working?

A. Yes, sir, he could.

Q. Do you consider that an easier job, if you could get that job back?

A. Yes, sir, that booking and flagging is a whole lot easier.

Q. Is that particularly true for an older man?

A. It would be, it would protect the older men more better, it would be lighter for him to do such jobs.

Mr. Cooper:

I believe that's all.

Cross Examination.

By Mr. Sadler:

Q. Major, as I understand you, you were originally hired by the Company as a brakeman?

A. Yes, sir.

Q. That is correct, is it?

A. That's right.

Q. That calls for work on the road, main line, is that right?

A. At that time.

Q. At that time it did?

A. At that time.

Q. And the switchman works in the yard, does he?

A. That's right.

Q. You have been working in the yard at Columbus, have you?

A. Yes, sir.

Q. During the time you have been a switchman?
A. Yes, sir.
Q. That covers how many years?
A. Around 25 years I think.
Q. And during those 25 years you have worked as a switchman in the Columbus yards?
A. Yes, sir.
Q. When you started working as a switchman, who was performing this booking and flagging?
A. The foreman.
Q. The foreman was doing it?
A. Yes, sir.
Q. And now the foreman has designated a member of the crew to do it, isn't that correct?
A. A member of the crew to do the booking and flagging, yes, sir.
Q. It is still the foreman's responsibility to have the booking done, isn't it?
A. To see that it is done right.
Q. To see that it is done right?
A. Yes, sir.
Q. And the foreman has designated a particular member of the crew to do that?
A. He is doing it.
Q. What?
A. He is doing it.
Q. He is doing it, he is designating somebody?
A. Yes, sir.
Q. In recent years the person that the foreman has designated has been called this booking and flagging man, is that right?
A. That's right.
Q. But the responsibility for that is still the foreman's, isn't it, Major?
A. That's right.

Q. Now you mentioned a number of jobs, for example, let me put it this way, you are now working the West Yard?

A. That's right.

Q. And when the hill job was discontinued, you wanted to work in the East Yard?

A. That's right.

Q. Is the pay the same at both places?

A. The pay is the same.

Q. Is the pay the same for the switchman as for the booking and flagging man?

A. Yes, sir.

Q. No difference in the pay?

A. No difference in the pay.

Q. Who did you talk with to make your request to be placed in the East Yard rather than the West Yard?

A. I talked to Mr. Patrick.

Q. Who is he?

A. He is the crew dispatcher.

Q. Other than Mr. Patrick, did you make any formal request to the Company to be placed in the East Yard?

A. At that particular time, I think Mr. McArdle came in.

Q. Who is he?

A. He is the yardmaster.

Q. He is the yardmaster. Did you write the Company or make any application for it?

A. I didn't write it, no, sir.

Q. You haven't written the Company anything about it?

A. I haven't written the Company anything about it.

Q. That is true on all of these other jobs that you testified about, isn't that correct? You haven't written the Company asking to be placed in the East Yard or the West Yard or to be given work at the brickyard, have you?

A. I have not wrote them.

Q. You have not put any request in writing to the Company on any of those?

A. Not no writing.

Q. That's right.

A. Not no writing.

Q. At any time?

A. Not no writing. Can I make a correction?

Q. All right, if you want to correct something, go ahead.

A. On this last hill job that went on, I put a bid on that job.

Q. In writing?

A. In writing.

Q. Who did you place that with?

A. In the hands of the trainmaster and the local chairman.

Q. And the local chairman?

A. Yes, sir.

Q. What is his name?

A. Parker.

Q. What date was that placed?

A. Nothing was ever answered or replied.

Q. I didn't ask you about the answer, I said when did you do that.

A. I doesn't remember the exact date on that, but it was during the time that—the hill job, that went on up for bulletining.

Q. You pulled some papers out of your pocket a minute ago.

A. I haven't got them in there.
Q. You haven't got it in there?
A. No, sir.
Q. What are those papers you were looking at?

Mr. Cooper:
I object to that. He hasn't looked at any papers. If he wants to refresh his recollection, he can, but Mr. Sadler is not entitled to ask what a man has in his pocket.

The Court:
I sustain the objection.

Q. Mr. Cooper questioned you about Otis Ray.
A. That's right.
Q. What date did that incident take place?
A. I don't know, but it was this particular job that we speak about. Otis Ray I think come down yesterday, five days from yesterday.
Q. Yesterday?
A. That's right.
Q. Do you have any written memorandum that would refresh your recollection on that, Major?

Mr. Cooper:
Just a minute. Judge I am going to object to—he has given the date.

Mr. Sadler:
He said "He thought."

Mr. Cooper:
He didn't say he thought.

Mr. Sadler:
Thought he has a memorandum here.

Mr. Cooper:
Wait just a minute. If the witness had actually refreshed his recollection—

The Court:
I sustain the objection.

Mr. Cooper:
I think he could go to it go at it but he can't go in this man's pocket.

Mr. Sadler:
You seem so secretive about it.

Mr. Cooper:
We are not secretive at all. Make your questions directed to competent evidence and we will put it in for you.

The Court:
Let's proceed.

A. On the 11th.
Q. On the 11th of what this month?
A. Yes, sir.
Q. Now Major have you been continuously employed by the Central since 1930?
A. How is that please, sir?
Q. Have you been continuously employed have you been employed by them all along?
A. Yes, sir.

Q. Or has your employment been discontinued?

A. All along.

Q. As a matter of fact along about 1948 or '49 you received notice that your employment was terminated with the Central didn't you?

A. That's right.

Q. And it was terminated was it not?

A. Yes sir that's right.

Q. Later you were reinstated with your seniority as a switchman were you not?

A. That's right.

Q. Even after having been terminated?

A. That's right.

Mr. Sadler:

We have no further questions.

By Mr. Rives:

Q. Major I believe you testified that you went to work for the Central of Georgia as a brakeman?

A. Yes, sir.

Q. And at that time the Central of Georgia had white brakemen didn't they?

A. Yes, sir.

Q. Now you talked about this job of booking and flagging and I believe you stated that that is the job that is filled by a white switchman?

A. Yes, sir.

Q. And he works under the direct supervision of the yard foreman or yard conductor?

A. We all do that.

Q. I believe you said that that work of booking and flagging was originally done by the foreman or the yard conductor?

A. Yes, sir.

Q. But later on they started to assigning a white switchman to a switch crew and the foreman would have him do this booking and flagging?

A. That's right.

Q. And that consists of making up a written list of the cars in a cut if you have got 50 cars in a cut he has to go down and read the tags on the car doesn't he?

A. Number of the car and initial.

Q. Number of the car and the initial?

A. Initials.

Q. And then he has a tag on it?

A. And then the seal.

Q. It has a seal?

A. That's right.

Q. It shows the destination of the car?

A. Yes, sir.

Q. He has to be able to read the tag on the car showing the destination?

A. Yes, sir.

Q. Then he has to make a written record as to what track in the yard that car goes to is that right?

A. What industry it goes to.

Q. It could go to—

A. Bibb.

Q. —another track in the yard couldn't it?

A. It wouldn't be a track it would be to the yard.

Q. If you have got a cut of 50 cars there the booking and flagging man would go in there and he would go down the entire line of cars and determine where each car went wouldn't he?

A. Yes, sir.

Q. Sometimes he will say that this first car would go in track nine?

A. That's right.

Q. The second car would go in track four?

A. Yes, sir.

Q. In other words the man holding the job of booking and flagging has to be able to read the tags and then know what track in the yard or what industry that car goes to?

A. That's right.

Q. But you first put it in a track in the yard before you take it to the industry don't you?

A. Yes, sir.

Q. You say that on two occasions when your foreman had to go to the yard office to make out his time slip that he asked you to do this booking and flagging?

A. Yes, sir.

Q. Those were the only two instances that you have done that work?

A. That's right.

Q. And how long was he gone?

A. About 30 minutes something like that.

Q. That is the only two occasions that you have ever done any booking and flagging isn't it?

A. Yes, sir, by request.

Q. And when you came back he checked your list to see whether you had done it right?

A. I guess he did I handed it to him.

Q. You handed it to him and then he checked to see whether you had done it right?

A. He looked at it and put it in his pocket.

Q. Do you know whether or not the cars were switched in accordance with the list or not?

A. Yes, sir.

Q. They didn't have to make any changes?

A. No, sir.

Q. So far as you know?

A. I worked on it. I know.

Q. How many cars were in these cuts?

A. I think about three cars that I had to place.

Q. On one occasion three cars.

A. Yes, sir.

Q. And you did the booking and flagging on these three cars you say?

A. I did the switching and all of the switching.

Q. On the other occasion how many cars were in the cut?

A. It wasn't on two occasions only one occasion.

Q. That is the only time you have ever done any booking or flagging?

A. Yes, sir.

Q. 3 cars in a cut?

A. Yes, sir.

Q. Lots of times they will have a large number of cars in the cut to do the booking and flagging on?

A. Yes, sir.

Q. What is the longest cut that you usually service in the yard?

A. Different amounts. Sometimes we have 30 or 40.

Q. Do you ever have more than that?

A. I think that's about all we handle in the cut usually. Sometimes on the brickyard job we handled more than on any others.

Q. You heard Odell Jones testify about the 115 car trains between Birmingham and Columbus?

A. That's right.

Q. You work in Columbus yard?

A. That's true.

Q. Do they sometimes bring that whole train of 115 cars in there put it in the yard for switching?

A. Yes, sir.

Q. Does the booking and flagging man have to go down and take those 115 cars and see that they are properly tagged?

A. They have a seal clerk to do that.

Q. Does the booking and flagging man also have to do the work that you have just described on the train of 115 cars?

A. We have a man that does the booking and flagging that takes the number of initials on those cars where they go and what they are. He does.

Q. Is that the booking and flagging switchman?

A. That is his job.

Q. On the whole 115 cars?

A. Yes sir but you don't have that many cars at the time.

Q. You could have from 40 to 50 in a cut at one time?

A. Yes, sir.

Q. Maybe a cut of 50?

A. Yes, sir.

Q. What is the longest cut you have ever handled?

A. About 49 or 50 cars something like that.

Q. I believe you said you went to Mr. Patrick the crew dispatcher and asked him for Mr. Woods job is that right?

A. That's right.

Q. He told you you couldn't have it because that was a white man's job?

A. That's right.

Q. Was Mr. Woods doing the work of booking and flagging?

A. No, sir, he was bleeding air.

Q. Bleeding air?

A. He is a one-armed man.

Q. He is a one-armed man?

A. Yes, sir.
Q. Do you know what his seniority date is?
A. No. sir I doesn't.
Q. Is his seniority date below your seniority date?
A. Away below it.
Q. You wanted his job?
A. Yes, sir.
Q. Air bleeder?
A. I wanted that jo his day off.
Q. I didn't understand that.
A. I said I wanted his day off.
Q. His day off?
A. Off on that job.
Q. You mean you wanted to do his job the day he laid off or the day he was off?
A. If they put me on it I would do it.
Q. I want to understand you Major. You asked the crew dispatcher—
A. Yes, sir.
Q. —to let you have Mr. Woods job?
A. That's right.
Q. On the day that Mr. Woods would be off?
A. Yes, sir.
Q. And he told you that you couldn't have it?
A. That's right.
Q. And he was a white man?
A. Yes, sir.
Q. And he was bleeding air?
A. That's right.
Q. Did you take any other job?
A. I took another job.
Q. That paid just as much?
A. That said just as much.
Q. What job did you take?
A. I taken the outside field.

Q. Outside field?

A. That's right.

Q. What day was this that Mr. Woods was off?

A. Off on Friday.

Q. In other words, you would have to take Tuesday off instead of Friday off?

A. That's right.

Q. That's the only difference.

A. That's the only difference.

Q. He is a one-armed white man?

A. That's right.

Q. Now then you say I believe that you were working on the hill job. That is out of Macon, isn't it?

A. No, sir.

Q. Where is that?

A. Out of the Columbus yard.

Q. You talked to the crew dispatcher about taking Mr. House's job?

A. That's right.

Q. Is Mr. House a switchman?

A. Yes, sir.

Q. A white switchman?

A. Yes, sir.

Q. You say he has seniority beneath or above you?

A. Yes, sir, beneath me.

Q. And you say the crew dispatcher told you you couldn't have it?

A. I couldn't have it.

Q. You couldn't have it, and said that it was a white man's job?

A. Yes, sir.

Q. What kind of a job did Mr. House work on?

A. He was leadman on the East Yard.

Q. Leadman on the East Yard?

A. Leadman on the East Yard, booking and flagging.

Q. You say booking and flagging?

A. That's what they said.

Q. Leadman, is that booking and flagging?

A. That's the same thing.

Q. That's another name for the man that does the booking and flagging?

A. That's the man that understands the work.

Q. Leadman?

A. Yes, sir, he can understand and do the work properly.

Q. Does this leadman, you call him the leadman because when he makes up this list that you testified about, does he lead and direct the crew in switching the car?

A. Yes, sir.

Q. That is work usually performed by the foreman?

A. Yes, sir.

Q. In other words, he more or less takes over and does the work of the foeman in directing that the switching be done in accordance with the list that he has made up?

A. That's right.

Q. And the other members of the crew are supposed to take his instructions with reference to the switching of those cars?

A. Yes, sir.

Q. That is the job of the leadman, and the booking and flagging job?

A. That's right.

Q. That is the job that you asked for?

A. That's right.

Q. Now they didn't give you that job?

A. No, sir.

Q. What job did you take?

A. I took the West Yard.

Q. West Yard?

A. That's right.

Q. The job that you took, what kind of work was this, switchman?

A. Switchman, riding boxcars.

Q. It paid just the same as that job that Mr. House had?

A. Just the same.

Q. You said something about the brickyard job. Did you say that they pulled the brickyard job, is that what it was?

A. They pulled the man off the brickyard job, cut one man off.

Q. Well, in other words you had a foreman?

A. That's right.

Q. And you had a leadman, or a booking and flagging man?

A. Booking and flagging man.

Q. You had two colored switchmen?

A. That's right.

Q. The foreman was a white man?

A. Yes, sir.

Q. And the leadman or booking and flagging man was a white man?

A. Yes, sir.

Q. The other two switchmen were colored men?

A. That's right.

Q. The work fell off?

A. That's right.

Q. And the Company decided that they would take one switchman off?

A. That's right.

Q. They let Smith out?

A. Yes, sir.

Q. Did Smith have more or less seniority than the white man?

A. He had more seniority than the white man.

Q. Mr. Gaffney was the white man?

A. Yes, sir.

Q. He had more seniority than Mr. Gaffney?

A. Yes, sir.

Q. Do you know whether Smith had ever done any work as booking and flagging?

A. No, sir, I doesn't know.

Q. You don't know whether he had had that 30 minutes experience that you had?

A. No, sir.

Q. So they let him out and let Mr. Gaffney stay there on the job?

A. Yes, sir.

Q. They still had booking and flagging on the job to do, didn't they?

A. Still was booking and flagging to do.

Q. Then after they let Smith out you had the white foreman and Mr. Gaffney as the booking and flagging man?

A. That's right.

Q. And then they had you as the switchman?

A. That's right.

Q. Now then I believe you mentioned Otis Ray. Is that a white man?

A. No, sir, a colored man.

Q. He is a colored man?

A. Yes, sir.

Q. What was the job you were involved in? You said something about four white men on the job, and they added another.

A. In the West Yard.
Q. What job is that known as?
A. It is the West Yard job.
Q. It is the West Yard job?
A. That's right.
Q. A foreman and how many switchmen?
A. At that particular time had five switchmen, but they added another one to it.
Q. You mean they had a foreman and six switchmen?
A. Yes, sir, yes, sir, yes, sir, they have a foreman and five switchmen.
Q. This is the West Yard job?
A. Yes, sir.
Q. In one shift?
A. Yes, sir.
Q. They had a foreman and six switchmen?
A. Yes, sir. They didn't have enough then.
Q. The foreman was a white man?
A. Yes, sir.
Q. How many booking and flagging men did they have on?
A. I think they had about five or six, looked like.
Q. Why?
A. They had all them white fellows on there.
Q. They were all white switchmen?
A. Yes, sir.
Q. Then you asked, I mean Otis Ray asked for that job?
A. Yes, sir.
Q. You didn't ask for it?
A. I didn't ask for it.
Q. How do you know about Otis Ray asking for that job?

A. He come to me and complained about it.

Q. He told you about it?

A. Yes, sir.

Q. You were not there when he asked for the job?

A. I wasn't there when he asked for it. He just came and told me that he had.

Q. He asked for it, Otis Ray came and told you he had asked for a job on the West yard switching job?

A. He had put in a bid for it.

Q. All you know about it is what Otis Ray told you?

A. That's right.

Q. That's all?

A. Yes, sir, that's right.

Mr. Rives:

We move to exclude the testimony about that transaction, because we were under the impression he was present at the time that that took place.

The Court:

Well, I will grant the motion, hearsay.

Q. Now you say that of course you are not a member of the Brotherhood?

A. No, sir.

Q. But you voted a strike ballot back about 1946, didn't you? I didn't ask you how you voted, but you voted, didn't you?

A. I think that—I disremember now whether I voted or not, but I know I was approached.

Q. You were given the privilege of voting if you wanted to?

A. I think at that time.

Q. Now you were also given the privilege of voting on whether or not you would work five days a week?

A. No, sir.

Q. You were not?'

A. No, sir.

Q. You never were given that right?

A. No, sir.

Q. Did you ever vote on it?

A. No, sir.

Q. How do you pronounce your name, Threatt or Threat?

A. Threat.

Q. In each instance that you say that you were displaced or denied a job assignment it was in connection with one of these jobs as booking and flagging, wasn't it?

A. That's right.

Mr. Rives:

That's all.

Mr. Cooper:

I've got one or two more questions.

The Court:

All right.

Re-Direct Examination.

By Mr. Cooper:

Q. If I recall your testimony correctly, the Company hires white man and puts them on the job of booking and flagging, although they have no seniority to begin with, is that correct?

A. They are hired as switchmen and placed on those jobs.

Q. Placed on those jobs?

A. Yes, sir.

Q. And does the Company do that for white men who have had no experience at all in the yard?

A. All they want is a white man who can read and write.

Q. Suppose they put a young white man on the job of booking and flagging as a switchman, on the job, how does he get along at first, if he has had no experience or training on it, who helps him?

A. The colored switchman helps him.

Q. Have you ever done that?

A. Yes, sir.

Q. Can you name any young white man that you have ever helped get broken in on the job of booking and flagging?

A. I disremember the white men's name but I was called off of my job to go to work one night at 11:00 o'clock on the lister job with this white man, to protect him and keep him out of trouble.

Q. Who told you to do that?

A. That's what the yardmaster told me, to do that.

Q. Was he a new white man?

A. Yes, sir, he was a new man, never had worked the engine.

Q. Never had worked?

A. No, sir.

Q. You helped keep him out of trouble?

A. Yes, sir.

Q. On his first work?

A. That's right, I was instructed from the yardmaster to keep him out of trouble, don't let him get into none, because I knew the work.

Q. Does it ever occur on the week ends, for instance, that they need a man for a crew, and there is no white man to be put on the booking and flagging job?

A. Yes, sir.

Q. How does that happen?

A. They don't have a white man available for the job, and they use a colored man.

Q. Have you ever been assigned like that?

A. No, sir, but I have been on the job that was assigned that way.

Q. Do you know other colored men that have been called to work on week ends or at times that they did not have available white men for the booking and flagging?

A. Yes, sir, sure do. He has come to work in the white man's place, there's a man sitting right there (indicating).

Q. What is his name?

A. Homer Williams. He has filled various jobs.

Q. He don't have a regular assignment?

A. Don't have a regular assignment, just in case of emergency.

Q. They don't permit them to get the jobs regularly?

A. No, sir.

Q. When they need them, they call them and let them do the work?

A. Yes, sir, they had better go.

Q. On this occasion some years back when there was a strike or strike vote that Mr. Rives asked you about, did any of you colored fellows sit in with the Brotherhood in determining what the new contracts would be?

A. No, sir.

Q. Did you have anything to do with the negotiations?

A. No, sir.

Q. Did you have anything to do with the negotiations that broke down before the strike?

A. No, sir.

Q. You never had anything to do with that?

A. No, sir.

Q. They didn't permit you to participate in it?

A. No, sir.

Q. Did you get a copy of the contract after that?

A. No, sir, scared to ask for one.

Mr. Rives:

We move to exclude that last remark, Your Honor.

The Court:

Well, I sustain it.

Q. You do know that Otis Ray was not put on that job that was bulletined, don't you?

A. Yes, sir.

Q. And you do know he is a colored switchman?

A. Yes, sir.

Q. And you do know he had more seniority than the white man that was put on it, don't you?

A. Yes, sir.

Mr. Cooper:

All right.

The Court:

Did I understand you to say that white flagmen are employed as switchmen?

The Witness:
Yes, sir.

The Court:
After they are trained they place them on that job?

The Witness:
Yes, sir.

The Court:
Is there anything further from this witness?

Mr. Cooper:
Just one moment. I might have been over this, but I want to be clear about it.

Q. A white man can be assigned, as you said, to the job of booking and flagging?
A. Yes, sir.
Q. Without, or even though he has less seniority than the colored switchman?
A. He can be assigned to those jobs.
Q. Has it ever occurred that a white man who is eligible, and has been working as a booker and flagger, elects to take the job of a switchman from a colored man, and permit a young white man, flagman, booker and flagger, to work?
A. We have that on the East Yard now.
Q. Who are those individuals?
A. I think Mr. Gibson and Mr. House is on those jobs.
Q. Now has a colored man been rolled off of a job?
A. No, they just bid those jobs in, and the older man takes the booking and flagging, and that takes care of that young man that follows the engine.

Q. How does that work? I am not clear about that. You have a white man working the booking and flagging job?

A. An older man.

Q. An older man?

A. Yes, sir.

Q. And you have working as switchman, a white man and a colored man?

A. White man, yes, sir, a younger man is following the engine. He works as a switchman.

Q. Has a colored man been displaced by that?

A. He has been denied.

Q. He has been denied the right to work the job of booking and flagging?

A. Yes, sir.

Q. Who is that colored man?

A. That is Otis Ray.

The Court:

Otis Ray?

The Witness:

Yes, sir, Otis Ray.

The Court:

Have any white bookers and flaggers ever rolled any colored switchmen?

The Witness:

No, sir.

The Court:

You have never known that to happen?

The Witness:

No, sir. The onliest way he would come by those jobs is through booking and flagging.

The Court:
I didn't get that last statement.

The Witness:
The onliest way to hold those jobs is through booking and flagging, a younger man, which they won't allow an older man to go on those jobs.

The Court:
What you are saying is that a young white man can hold those jobs over a senior switchman?

The Witness:
Yes, sir.

The Court:
But you have never known them to put an older white man, an older white man to roll a colored switchman, and then put a younger man on the booking and flagging?

The Witness:
No, sir.

The Court:
Gentlemen we will recess until 1:30.

(Whereupon, at 12:00 noon a recess was taken until 1:30 p.m., of the same day.)

Afternoon Session 1:30 P. M.

The Court:
You may proceed.

Mr. Cooper:

I will take Homer Williams, Jr., please.

HOMER WILLIAMS, JR., one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q What is your full name, please?

A. Homer Williams, Jr.

Q. Do you work for the Central of Georgia?

A. Yes, sir.

Q. What is your job?

A. Switchman.

Q. Whereabouts are you working right now?

A. At the time now I am working in the yard, switching, and on the extra board.

Q. You are on the extra board in the yard?

A. Yes, sir.

Q. What yard?

A. Both ends, East and West Yards.

Q. In Columbus, Georgia?

A. That's right.

Q. How long have you been working for the Railroad?

A. About 11 years, something like that.

Q. Did you have a regular job before you went on the extra board?

A. Yes, sir.

Q. What was that regular job?

A. Switching.

Q. In the yard?

A. Yes, sir.

Q. Would you just explain, just briefly, for the Court what we mean when you say the extra board? Maybe I can suggest the answer that will just clear it up briefly. A man working on the extra board is not assigned to a regular job, is he?

A. That's right.

Q. He doesn't get as much work as the man that has a regular job, does he?

A. No, sir.

Q. Isn't it true that the man on the extra board work first in, first out?

A. That's right.

Q. And that means that the last man that had a job gets the first job up?

A. Thats' right.

Q. Do you ever get any extra—

Mr. Miller:

What do you mean by last in, first out?

Q. Will you explain it?

A. First in, first out, just like I work today, next man have a chance to work tomorrow, second out.

Mr. Miller:

Before you work again?

The Witness:

That's right, before I work again. That's first in, first out.

Q. Are you permitted to get in on the extra jobs that come up on the extra board that are called booking and flagging?

A. No, sir.

Q. Does that mean that you get less work than the white men on the extra board?

A. Yes, sir.

Q. The white men are permitted to do the extra jobs of booking and flagging, aren't they?

A. Yes, sir.

Q. No colored man is permitted to take those jobs?

A. No, sir, not to take them jobs of that kind.

Q. How does the Company hire in white men to be put on the job that they call booking and flagging? Do they take men that have never worked before in the yard, for instance, and assign them to that job, white men?

A. We have had them come in there, I would say about the first or two days, and work, and they will call them out to work in ahead of me, booking and flagging, and leave me not working.

Q. Men that have only been there two or three days?

A. That's right.

Q. Do you know what the work is that these men do that are called bookers and flaggers?

A. Yes, sir.

Q. Can you do that work?

A. Yes, sir.

Q. Do you recall during 1953, I believe it was, that a job came up that you bid on and spoke to the dispatcher, Mr. Murray about?

A. Yes, sir.

Q. What was that job, do you remember?

A. That job was signed up as booking and flagging job.

Q. And you bid on it?

A. I bid on it.

Q. Was that the correct name, Mr. Murray?

A. Yes, sir.

Q. The dispatcher?

A. Yes, sir.

Q. What did he tell you?

A. He said, I asked him why I—I seen that the younger white boy had it, and I asked why I didn't get the job, and he said that job is for white men.

Q. Who was the young white man that got that job?

A. That was his brother.

Q. Another Mr. Murray?

A. Yes, sir.

Q. Did you have seniority over that Mr. Murray?

A. Yes, sir.

Q. If you had gotten that job would you have had regular work?

A. Yes, sir, every day.

Q. Instead, you have been left on the extra board, just working when you can get a job?

A. When I can get a job, that's right.

Q. Do you know the work that the young Mr. Murray did?

A. Yes, sir.

Q. Do you know that job?

A. Yes, sir.

Q. Can you do that all right?

A. Yes, sir.

Q. How often does the extra board turn, I believe that's the phrase you fellows use, isn't it?

A. It depends upon how many men is off. Sometimes it turns every day. For the last one or two days it has been doing it, peoples taking their vacation and all such as that, people off, and all of that. It makes a lot of jobs open.

Q. If one of those jobs comes up that involves booking and flagging, you have to pass that over, don't you?

A. Yes, sir, they run around me for that job.

Q. Have you ever taken numbers and seals off of cars in the yard?

A. Yes, sir, I have.

Q. Is that what booking and flagging involves?

A. That's all it involves.

Q. When you first came to the Railroad some years ago, how were the crews working, did they have a booker and flagger?

A. No, sir, they didn't.

Q. What did they have, two colored switchmen?

A. Two colored switchmen and a foreman.

Q. When was it that they started calling one of the jobs that the white men had booking and flagging?

A. The reason that after this five days come about, they hired a bunch of young white boys, and after then they done away with the five days, and that has made a job not available to us.

Mr. Rives:

I can't understand him.

Q. Talk a little louder.

A. I say the reason they hired a bunch of young white boys, during that five days, and they started that along in that time.

Q. They put these young white boys on the jobs they call booking and flagging?

A. That's right.

Q. Even though there were colored men with much more seniority there?

A. That's right.

Q. They wouldn't let the colored men take those jobs?

A. That is when I first heard about this booking and flagging.

Q. Have you ever had to flag a passenger train, for instance?

A. Yes, sir, I have.

Q. How would it come about that you had to flag the passenger train?

A. Well, we have had some white boys on there that wasn't capable to do it, by not being acquainted with the railroad as much as I have. They dropped me off to flag because I knowed what to do.

Q. They had an inexperienced white man that they called a flagman, but they would put you off actually to do the flagging?

A. To do the flagging.

Q. But they won't let you bid on a regular flagging job?

A. No, sir, they won't.

Q. When I say "Flagging job", I mean booking and flagging or whatever they call it there in the yard, you understand that?

A. Yes, sir, I understand it.

Q. Does it ever happen that a colored switchman in the yard has to be assigned to do the job of a booker and flagger because there are no white bookers and flaggers available?

A. Sure, it happens often.

Q. How does that happen?

A. You take on holidays, such as like big football games, fairs, all like that, when they want to be off, we do that work right on.

Q. The young fellows leave, and you all do their work?

A. Yes, sir, we do it right on.

Q. And when they come back, they take their regular booking and flagging jobs?

A. They go right back.

Q. Is there any other man working, white man working in the yard now who is working regularly and has less seniority than you besides Mr. Murray?

A. Yes, sir, there are two there now holding a regular job I could hold.

Q. Who are they?

A. Mr. Murray and Mr. Dunham.

Q. Dunham?

A. Dunham, that's right.

Mr. Cooper:

Thank you. I believe that's all.

Cross Examination.

By Mr. Sadler:

Q. Homer, when you were first employed by the Railroad, you were employed to do switching, were you?

A. That's right.

Q. Was that in the yard?

A. In the yard.

Q. And what was the job that you were assigned to at that time?

A. My first employment, I was on the extra board.

Q. Assigned to the extra board?

A. Yes, sir.

Q. You stated at one time you had a regular job switching?

A. Yes, sir, I have.

Q. Where was that job?

A. I had one on the East end and one on the West end and one on the bum job, which they run out of town about 7 miles.

Q. Were those jobs discontinued?

A. One job was discontinued, the bum job was, and the East Yard job, we had a fellow over there that was hurt, out of service. When he got back well he came in and went to work. He rolled me and left a young white boy down there.

Q. When you first went to work you went to work on the extra board?

A. Yes, sir.

Q. Then you had a regular job in the East Yard?

A. Yes, sir.

Q. That was substituting for somebody that was injured, is that right?

A. How is that?

Q. Your job in the East Yard, you were substituting for somebody that was injured, is that correct?

A. No, sir, it wasn't say substituting for nobody that was injured.

Q. Was that the job that was finally discontinued?

A. No, sir.

Q. What happened to the job in the East Yard?

A. The bum job was finally discontinued.

Q. Then after that job was discontinued where did you go?

A. I went to the West Yard.

Q. What happened on that job?

A. After that five days was done away with, and that has made lesser jobs, I didn't stand for another regular job for that present time.

Q. You didn't stand for one as switchman?

A. That's right.

Q. You went back to the extra board?

A. Went back to the extra board.

Q. Then was that the time that you were substituting for somebody that was injured?

A. It wasn't really substituting for nobody that was injured.

Q. You took somebody's place that was injured, was that it?

A. No, sir, wasn't nobody that was injured that I took his particular place. He was out, injured.

Q. When he returned you went back on the extra board?

A. When he returned to his job, after he is off a certain length of time, and when you come back after 30 days you can go to any job you want to.

Q. He returned to his job?

A. He returned to one. Ain't no special job, just returned to one job.

Q. He returned to that, and you returned to the extra board?

A. That's right.

Q. Where you had been?

A. That's right.

Q. Mr. Cooper asked you about the booking and flagging.

A. Yes, sir.

Q. And hiring young white men. As a matter of fact those white men are given some training, aren't they?

A. Some training.

Q. That's right, before they actually are put on the pay roll?

A. All switchmen take the same examination.

Q. I am asking you if the men that are assigned to the booking and flagging jobs aren't given some training in that booking and flagging before they actually get on the pay roll?

A. No, sir, they don't have no training specially for that booking and flagging.

Q. They are given a course, aren't they, in booking and flagging, and become familiar with the various operations of the railroad before they get on the pay roll?

A. You have to take the rule book examination.

Q. They work around without pay for a time, learning the various responsibilities before they get on the pay roll?

A. Sometimes they do.

Q. How long does that normally take?

A. It is according to how they feel about that.

Q. It takes 30 or 60 days, doesn't it?

A. No, sir, not that much, never have.

Q. It takes more than two or three days, doesn't it?

A. Sometimes six or seven, or fourteen, something like that. The highest I have ever known is fourteen.

Q. The men that have been put on this booking and flagging job have been given some period of time to become familiar with the operations of the railroad, isn't that correct?

A. That's right.

Q. So then it is not a question of somebody being hired on Monday and being put to work on that booking and flagging job on Wednesday, a two day period?

A. I have seen it done.

Q. How many times has that happened?

A. I didn't count them one by one, but I have seen it done, I have seen them booking and flagging when he didn't know one switch from another.

Q. He had some training, didn't he?

A. Not to get hurt, that's all he knows.

Q. He had gone through the period of training, had he not?

A. It takes a long time to go through a period of training.

Q. But before he was assigned to that he had had this period of training with the railroad, hadn't he?

A. Nothing but qualify for the board.

Q. For the booking and flagging, he had had the training on that. You stated you had done some booking and flagging yourself?

A. Yes, sir.

Q. How many times have you done that?

A. Oh, I have done that a good many times.

Q. How many?

A. I didn't have it copied down.

Q. Will you give us some idea?

A. The last time, it ain't been over a month ago.

Q. Tell the Court what you did in booking and flagging.

A. It ain't nothing but you got a car leaving the yard, or at the place, booking it away from the yard into that place, and booking it out of that place into the yard, seal numbers and seal on it, or empty.

Q. Who assigns you to that?

A. Well they don't do no assignment to it.

Q. Somebody told you to do it, didn't they?

A. We knows our job. Sometimes we just go on and do that. That's our job, we are all there to do the work.

Q. You mean to say you just went there with the crew, that somebody else in the crew was designated to do that work, but you did it instead?

A. I was on the crew.

Q. How many members were there on that crew?

A. There was three, with the foreman.

Q. Three with the foreman?

A. Yes, sir.

Q. Were you the one that was designated to do the booking and flagging on that date?

A. Yes, sir.

Q. Who designated you?

A. The foreman always places the crew where he wants them to be.

Q. You did the work on that day?

A. Yes, sir.

Q. Was there any other time?

A. Yes, sir, I have done it a lot of times.

Q. You have always been designated by the foreman?

A. Yes, sir, he always tells what to do.

Q. Have you bid in or requested assignment in any of these booking and flagging jobs?

A. I have put in bids on them.

Q. Have you put it in writing to the Company?

A. No, sir, I didn't.

Q. You haven't done that?

A. No, sir.

Q. At any time?

A. No, sir.

Q. On this extra board you described, you come in off of a run today, and you wait your turn to go back out?

A. Yes, sir.

Q. A man that worked yesterday would go out ahead of you?

A. That's right.

Q. How many members are there on that extra board?

A. I don't know exactly. Some of them there, I didn't even see their name, but they are somewhere around there, about 30 or 40.

Q. How many of those are Negroes?

A. How is that?

Q. How many of those on that extra board are Negroes?

A. Negroes?

Q. Yes.

A. I don't know.

Q. Can you give us some idea, out of the 30 or 40?

A. No, sir.

Q. As many as half?

A. I think there is mostly white.

Q. How many out of the 30 or 40, can you give any idea at all? You are one of them. How many names can you call?

A. I don't know exactly how many there is, but the biggest portion of them is white.

Q. Would you say as many as 10 out of the 30 or 40 are Negroes?

A. I would imagine more.

Q. More than 10 out of the 30 or 40?

A. Yes, sir.

Q. They are on the extra board as switchmen?

A. Yes, sir.

Q. All of them as switchmen?

A. Yes, sir.

Q. Has there been any time that you know of when you yourself have been supposed to go out on that extra board and some white person junior to you has taken a switchman's job and gone out ahead of you?

A. Yes, sir.

Q. When was that?

A. I don't know exactly when it was, but it happened two or three times there an estimate. What we call an estimate is every two weeks. It happened two or three times.

Q. Was that as a switchman, or going out booking and flagging?

A. Well, that's a job they calls them for, booking and flagging.

Q. They call them for booking and flagging?

A. Yes, sir.

Q. They didn't call them for the switching job?

A. It is all about the same. I don't know what they call them for. I couldn't tell what they call them for.

Q. You just testified, didn't you, they were called for booking and flagging, isn't that right?

A. That's the job they say, if you ask them anything about it, they tell you it is booking and flagging.

Q. That is what they did?

A. That is what they tell you.

Q. Strictly for switching, not booking and flagging, have they called a white man to go out in place of you, to do purely switching, not booking and flagging?

A. Yes, sir.

Q. When was that?

A. I may be in ahead of one of them today. When the board is set up for the afternoon, he will be in ahead of me today.

Q. I can't understand that.

A. I am first out.

Q. All right.

A. They may need two extra men on that job.

Q. All right.

A. He is second out. He follows me. When we knock off, he will be in ahead.

Q. Purely for switching?

A. Yes, sir.

Q. Then you go out next time?

A. He still go out ahead of me.

Q. Then you follow right after him?

A. After him.

Q. Have you reported that practice to the Company in writing?

A. No, sir, I haven't.

Q. You have made no written complaint to the superintendent about that practice, have you?

A. Yes, sir, we made one complaint to one superintendent we had on our Division.

Q. Have you written the Company?

A. No, sir. We went up to the personnel and talked to one superintendent on our Division, Mr. Dillard.

Q. When was that?

A. That was during the time he was serving as our Division superintendent.

Q. That is the only time, is that correct?

A. That's the only time we ever have reported to the Company.

Q. When you started to work 11 years ago were there any Negroes that were doing booking and flagging work then?

A. Yes, sir.

Q. How many were there doing that at that time?

A. Most all of the jobs. The fact is we have a little more seniority than they have. Once upon a time, some of the white there, they didn't want them jobs, and we had to drag pick handles around, and such as that, and they came in last after we did.

Q. You heard Major Threat testify that originally the yard conductors or yard foremen did that booking and flagging, is that not correct?

A. Yes, sir, at that time.

Q. Then later the foreman designated that to some member of the crew?

A. Yes, sir.

Q. That's right, is it?

A. Yes, sir.

Q. That designation, the foreman designated that to somebody that was called a booking and flagging man, isn't that right?

A. That's the way it is.

Q. Those were white men, weren't they?

A. Yes, sir, that is the white men.

Q. That was true when you came there, wasn't it?

A. Booking and flagging was.

Q. Yes.

A. I didn't know nothing about booking and flagging when I first came.

Q. You just hadn't heard about it at that time?

A. When they called us, they called us for the job we stood for.

Q. As switchmen?

A. Yes, sir.

Q. Will you explain what you just stated?

A. If you stood for a job, they called them for it. If it was flagman, they called him. That's when I first came there.

Q. That's right.

A. Later on after that, they call them now bookers and flaggers. They call one colored to follow the engine, and one to book and flag.

Q. If they call for a switchman rather than booking and flagging, it takes the regular order on seniority, doesn't it?

A. Yes, sir.

Q. Now, Homer, have you ever been displaced on the extra board by any switchman, not booking and flagging, but any switchman that was junior to you?

A. You mean run around, what we call it?

Q. Yes.

A. That he will work in ahead of me, when I stand to work?

Q. That's right.

A. Yes, sir, I have been run around a lot of times.

Q. You have been displaced by junior switchmen now?

A. Not displaced. He worked before I did.

Q. You mean you would be on the extra board?

A. Yes, sir.

Q. And they would take some junior man to you and send him out?

A. Yes, sir.

Q. Wouldn't he be ahead of you on the extra board?

A. Yes, sir, he would be ahead of me.

Q. That's the way the extra board works, isn't it?

A. That's right, that's the way it is.

Q. Now you mentioned a conversation with Mr. Dillard. Will you tell us about how long ago that was?

A. I don't exactly know how long its been, but we all went up and had a talk with him about it.

Q. Were you there?

A. Yes, sir, I was there.

Q. What request specifically did you make of Mr. Dillard on that occasion?

A. We asked him about losing so much time, we all had to work for a living. And we would get run around about the booking and flagging. And I think Mr. Bailey come up at the time, that is our yardmaster. We spoke about it.

Q. What reply did Mr. Dillard give?

A. He said he would look into it. We never have got not more answer than he would say he would look into it.

Q. You asked him about losing so much time?

A. Yes, sir.

Q. Had there been any switchmen on the extra board, not booking and flagging, but switching, that have gotten more time than you have and was junior to you?

A. The extra board don't turn by seniority. It is turned first in, first out.

Q. You have gotten then that treatment along with the rest of them?

A. I got it right with the rest of them.

Mr. Sadler:

I believe that's all.

The Court:

Are there any questions?

By Mr. Rives:

Q. Homer I believe that you testified that you were employed by the Central of Georgia Railway Company as a switchman in the East Yard and the West Yard at Columbus, Georgia?

A. That's right.

Q. And you have been working for this Company about 11 years?

A. Yes, sir.

Q. And you hired out to the Central of Georgia Railway Company as a switchman?

A. Yes, sir, I did.

Q. And you have been employed by that Company continuously since you hired out to that Company?

A. Yes, sir.

Q. As a switchman?

A. Yes, sir.

Q. You have never hired out to that Company as a brakeman?

A. No, sir.

Q. And you have never worked as a brakeman?

A. No, sir, I haven't.

Q. Your entire service with the Central of Georgia Railway Company has been in yard service at Columbus, Georgia?

A. Yes, sir.

Q. Where was it that you flagged on a passenger train?

A. That was in the yard limits, but we goes out sometimes, I've gone down the track, down the brickyard road.

Q. On a passenger train?

A. Yes, sir, it runs from, at the time, that train was running from Andalusia, from Columbus to Andalusia, one trip a day.

Q. You mean you worked as flagman on the Central of Georgia passenger train that operated from Columbus to Andalusia?

A. No, sir, we was braking on the brickyard job, but running that same rail, run to Andalusia and back to Columbus.

Q. Is this a regular passenger train that runs between Columbus and Andalusia?

A. It was at the time.

Q. It was a regular passenger train?

A. Yes, sir.

Q. And the regular crew for that train was an engineer, fireman, baggage man and a conductor and the flagman, is that right?

A. I wasn't working on that train.

Q. I am trying to get at—oh, you were not on the crew of the passenger train?

A. No, sir, I wasn't working on that train.

Q. You just got out and flagged the passenger train, you mean you got out on the line and told them to come on by or something like that?

A. We had a brickyard job running down that rail, and the same rail the passenger train was running on.

Q. Yes.

A. I was a member of the crew on that brickyard job.

Q. And you were a switchman?

A. Yes, sir. It left me down there to flag the passenger train, to keep them off the brickyard cut.

Q. Let's see if I understand. This brickyard job is a switching job?

A. Yes, sir.

Q. It consists of a switching crew out of the Columbus yard?

A. That's right.

Q. You were switchman on that switch crew?

A. Yes, sir.

Q. And you had been down to the brickyard, switching in the brickyard?

A. Yes, sir.

Q. Some of your cars were out on the main line track?

A. Yes, sir.

Q. Your foreman or yard conductor would have to go out there to flag the passenger train, to keep it from runnng into your cars out on the main line?

A. That's it.

Q. That is the flagging you are talking about?

A. Yes, sir, that's the flagging.

Q. At the time you were doing that you were switchman on the switching crew out of the Columbus yard?

A. That is right.

Q. You were just doing what your foreman sent you out there to do?

A. Yes, sir.

Q. The other members of your crew were doing something else in the brickyard?

A. Yes, sir.

Q. Now I believe you state your regular job is as switchman?

A. I am regular.

Q. But now you are on the extra board?

A. Yes, sir.

Q. Now you hold that regular job as switchman by virtue of your seniority?

A. Yes, sir.

Q. And when you were rolled off of that job, you were rolled off by a switchman who had more seniority than you, weren't you?

A. Rolled off by a switchman that had more seniority than me, but—

Q. That's what I asked you. Now then you had a right to go roll another switchman that had less seniority than you, didn't you?

A. I ought to, but I—

Q. Well, you could have?

A. No, I couldn't do it.

Q. Why?

A. Because the switchman that was left there that I could have rolled was a man called booking and flagging. I can't roll them men.

Q. When you got rolled off of your regular job, was there another regular job assignment that you had enough seniority to hold?

A. Yes, sir.

Q. Not booking and flagging job, I mean another swithchman's job?

A. No, sir, wasn't another one left.

Q. That was when you went on the extra board?

A. Yes, sir.

Q. Before that, you had had another regular job, hadn't you?

A. Yes, sir.

Q. When you were rolled off of the previous regular job by a man having more seniority than you had, you rolled another man off of a regular job, didn't you?

A. That was the last job I held.

Q. Going back before the last regular job, you had a regular job, didn't you?

A. Yes, sir.

Q. What was that job?

A. Switching.

Q. Where?

A. In the Columbus yard.

Q. What trip?

A. That was working from 11:00 to 7:00.

Q. You had a regular job?

A. Yes, sir.

Q. As a switchman?

A. Yes, sir.

Q. And a man that had more seniority than you had rolled you?

A. Rolled me.

Q. Then you in turn rolled a switchman on another regular job, the job that you had when you went from that job to the extra board?

A. I didn't roll nairy other switchman. I could have rolled a switchman if it hadn't been for this flagging and booking.

Q. Is the 11:00 to 7:00 job the last regular job you had?

A. Yes, sir.

Q. Go back to the job before that. You had a regular job before that?

A. Yes, sir.

Q. What job was that?

A. 11:30 to 7:30, East Yard.

Q. 11:30 to 7:30 job as switchman in the East Yard?

A. Yes, sir.

Q. A regular job?

A. Yes, sir.

Q. A switchman that had more seniority rolled you?

A. Yes, sir.

Q. Then you rolled a switchman off of another regular job from 11:00 to 7:00, didn't you?

A. No, sir, I didn't go that way.

Q. Where did you go to?

A. I had to go to the extra board, and leave a man on the 11:30 job younger than I did.

Q. When you went to work for the Central of Georgia as a switchman did you go on the extra board, or did you have a regular job?

A. I had to go on the extra board.

Q. How long had you been working there when you first got a regular job?

A. I don't know exactly.

Q. Just about?

A. Just about four or five years.

Q. Do you remember what regular job you got?

A. The first regular job I drawed was on the bum job.

Q. Bum job?

A. Yes, sir.

Q. Out of the Columbus yard?

A. Yes, sir.

Q. How long did you hold the bum job, which was a regular job?

A. About half a year.

Q. Then a man that had more seniority than you had rolled you off of that job, didn't he?

A. No, sir, not the bum job, they discontinued that job.

Q. What did you do then?

A. At that time I went to the extra board.

Q. You went to the extra board?

A. Yes, sir.

Q. Now then, when, after you got off the extra board, did you go on to another regular job?

A. Yes, sir.

Q. When?

A. I went to a regular job then down to the East Yard.

Q. East Yard?

A. Yes, sir.

Q. What shift?

A. 11:30 to 7:30.

Q. Do you remember about when that was?

A. In '50, the latter part of '50.

Q. That was a regular job?

A. Yes, sir.

Q. How long did you stay on it?

A. About five months.

Q. And then did a man that had more seniority than you had roll you off of that job?

A. Yes, sir, he did.

Q. Then you went and rolled another man off of a job and took a regular job?

A. No, sir, I had to go to the extra board again.

Q. You went to the extra board again?

A. Yes, sir.

Q. Let me ask you this, was there a regular job that you had enough seniority to hold?

A. Yes, sir, they left a man on the job there that I was on.

Q. When you were rolled off the 11:30 to 7:30 job?

A. That's what I mean.

Q. Was there another job in the yard that you had enough seniority to hold?

A. Yes, sir.

Q. You had an election, you could either go to take the regular job or go to the extra board?

A. Yes, sir.

Q. You took the extra board?

A. I taken the extra board because I couldn't roll the other man what I left there.

Q. I don't understand that. When you got rolled off of the 11:30 to 7:30 job—

A. Yes, sir.

Q. —there was another regular job as switchman, not as booking and flagging job, but as a switchman that you had enough seniority to bid in, wasn't there?

A. No, sir, wasn't nairy one at that time.

Q. I misunderstood you then. There was not another regular job in the yard that you had enough seniority to hold?

A. Yes, sir.

Q. There was?

A. There was one there.

Q. But you didn't take it, you went to the extra board?

A. I couldn't take it.

Mr. Cooper:

I object to that. He has been over it five times.

Mr. Rives:
I don't understand it.

The Court:
You didn't take it, or you couldn't take it because it was a booking and flagging job?

The Witness:
I couldn't take it because it was a booking and flagging job.

Q. Let's forget about that. Was there any switchman's job, regular job in the yard, that you had enough seniority to bid in when you were rolled off the 11:30 to 7:30 job?
A. Yes, sir, there was.
Q. All right. You didn't bid it in, you went on the extra board, didn't you?
A. I couldn't bid it in.

The Court:
I think we have been over it enough.

Mr. Rives:
I still don't understand it.

The Court:
I think I do. He is taking the view that he had seniority for that booking and flagging job.

Mr. Rives:
Well, I asked him to disregard that.

The Court:

Let's not waste any more time. I understand what he is talking about.

Mr. Rives:

All right.

Q. Let me ask you this, when you are rolled off of a regular job assignment, if there is another regular job that you have enough seniority to hold, you have an election either to take that job or to go on the extra board?

A. You have that opportunity.

Q. You have that opportunity?

A. Yes, sir.

Q. Isn't it true that at times, instead of taking a regular job that you had seniority for, you went and took the extra board?

A. I never have left a regular job for the extra board.

Q. Isn't it a matter of fact that sometimes the man on the extra board makes more money than a man on a regular job?

A. It's very seldom you do that. You can't guarantee it.

Q. Sometimes he does, doesn't he?

A. Wouldn't nobody take a chance on it.

Q. Don't you know that the extra men sometimes make more than the regular men?

A. It might happen once in a while.

Q. Don't you know it happens every now and then?

A. It has happened, but he wouldn't take a chance at that.

Q. Of course when you get on the extra board you go out according to the position you hold on the

extra board, rather than on the basis of your seniority?

A. The extra board don't work by seniority.

Q. No, it is the position you hold on the board?

A. Your turn, first in, first out.

Q. That's right. Now, you just said that you can do the work of booking and flagging?

A. Yes, sir, I can do that.

Q. Have you ever done the work of booking and flagging?

A. Yes, sir, I have done it.

Q. How many times have you done that work?

A. I didn't keep count of them. As regular as they call me for that job I'll do it.

Q. You will do it as regular as they call you, but how many times have you actually done the work?

A. I haven't kept direct count.

Q. Well, what is your best recollection about it?

A. I couldn't say, but there is so many I wouldn't count them, a lot of times.

Q. Do you know what a cut list is?

A. Sure I do.

Q. What is it?

A. Cut list is a man that's got a record, spot cars, going to different parts of the railroad.

Q. Who makes up the cut list?

A. The yard clerk marks the cuts, and every man in the yard knows the mark on the cars.

Q. Don't you know as a matter of fact that the booking and flagging man makes up a cut list and gives each of the other members of the crew one of those lists, and they switch by that list?

A. No, sir, I can stand beside that train and give a list as good as he can. We switch by mark, and I know marks as good as the booking man.

Q. Doesn't this man that does the booking and flagging, doesn't he go down the cars and get the initials and the number, and read the tag as to where it is going, and then make up a list, that the first car in the cut goes to track No. 9, and the second one to track No. 4, the third to track No. 3, doesn't he do that?

A. We don't switch cars by initials. We switch by destination.

Q. You have to go down and read the tags, don't you?

A. No, sir, we have a yard clerk that makes a mark, and we knows that mark.

Q. The yard clerk goes down?

A. Yes, sir.

Q. You mean the booking and flagging man doesn't go down and make up a list of what track those cars go in?

A. No, sir, we all know where we go.

Q. In the booking and flagging that you did, you didn't do that, did you?

A. They don't do it there.

Q. Let's find out what you did. When you did that work, you didn't make up a list of the cars in the cut, and write down the track that each one of those cars was going on, did you? You didn't do that?

A. Yes, sir, I make up a list.

Q. I say did you?

A. I made up a list.

Q. You did?

A. Yes, sir.

Q. You did do it?

A. I get a list every day.

Q. Somebody else had made it up though?

A. No, sir, I could make it out myself.

Q. I am not asking you what you can do. When you work as booking and flagging, that was made up by the yard clerk?

A. Yes, sir, it was marked.

Q. The yard clerk made up the list, and you work by his list?

A. That's right.

Q. You didn't make up a list, that was true every time you worked as booking and flagging, isn't it?

A. Yes, sir.

Q. I will ask you if this man that does the booking and flagging doesn't make a placement record?

A. Make a placement record?

Q. Make a placement record. Do you know what a placement record is?

A. Yes, sir.

Q. What is it?

A. There is where cars is going to, and where it is from.

Q. Is it a written paper?

A. You mark it on the work sheets.

Q. What do you put on there?

A. Where it is from and where it is going to.

Q. Did you put the—

A. Seal number.

Q. —seal number on there, and initial of the car?

A. Yes, sir.

Q. And number of the car?

A. Yes, sir.

Q. What else?

A. That's all we put on.

Q. Don't you put on there the time the car was placed at the industrial plant?

A. You can do it.

Q. You never did that when you were booking and flagging?

A. It's not exactly required to do it. They don't do it all the time.

Q. They are supposed to?

A. They've got a place marked.

Q. When you did booking and flagging, you never did that, at the time that you put the car in?

A. Yes, sir, I do that, I pulled out my watch, look at it, and tell what time it was placed.

Q. You didn't put it on the card?

A. You had to do that to make a complete record.

Q. I thought you said they didn't always do it?

A. They are not obliged to do it.

Q. They had a place on the card to do it?

A. Yes, sir, like a question you are not obliged to answer.

Q. Sometimes you didn't do it?

A. Sometimes we done it, sometimes we didn't.

Q. I will ask you if the man that does the booking and flagging doesn't assist the foreman in instructing the other members of the crew how and where to switch the cars, where to put them?

A. No, sir. We gets our instructions from the foreman.

Q. This booking and flagging man, when you were switching on the crew, and they had a booking and flagging man, wouldn't he tell you what cars to put where?

A. No, sir, the foreman gives me instructions, to tell where I will deliver them.

Q. How is that?

A. No, sir, the foreman gives me instructions.

Q. In other words, if the booking and flagging man came up and told you where to put a car, you wouldn't

put it there, you would wait until the foreman told you?

A. I gets my instructions from the foreman.

Q. You don't take instructions from anybody else?

A. We take instructions from one another.

Q. This booking and flagging man did give instructions with reference to the switching of the cars, didn't he?

A. Sometimes they do, sometimes the foreman does.

Q. You would accept those instructions, didn't you?

A. I accept instructions on the job.

Q. Now I believe you testified that you had made a complaint to the Division superintendent about not being permitted to bid in these booking and flagging job, is that right?

A. Yes, sir.

Q. Do you know Mr. Grady Byington, over there, the big man over there?

A. I've seen him, I don't to say personally know him.

Q. You have never made any complaint to any representative of the Railroad Brotherhood about not being able to do it, have you?

A. No, sir.

Q. You have not?

A. No, sir.

Mr. Rives:

That's all. Thank you.

The Court:

All right.

Mr. Cooper:

Just one other question.

Re-Direct Examination.

By Mr. Cooper:

Q. I don't believe I asked you, but you are not a member of the Brotherhood that is the Defendant here, are you?

A. No, sir.

Q. You have heard the other testimony. It is correct, is it not, that the colored switchmen are not permitted to be members of the Brotherhood?

A. No, sir.

Mr. Cooper:

That's all.

(Witness excused.)

Mr. Cooper:

Rutledge, come around and take the stand, please.

DOCK RUTLEDGE, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. What is your full name?

A. Dock Rutledge.

Q. Dock, D-o-c-k?

A. D-o-c-k, that's right.

Q. You work for the Central of Georgia, the Defendant in this case, don't you?

A. Yes, sir.

Q. What is your job?

A. Switchman in the West Yard.

Q. You are a switchman in the West Yard?

A. Yes, sir.

Q. In Columbus?

A. Columbus Division.

Q. How long have you been a railroad man, working for the railroad?

A. I started working for the railroad the 11th of May, in '25 at the freight house. I left the freight house and started switching out in the yard on the 22nd of December, '36.

Q. Is that the yard that you said you are working in now?

A. Yes, sir.

Q. You have heard the testimony. Is it correct that in the yard the jobs that are called booking and flagging for switchmen are not open to colored men?

A. Yes, sir.

Q. Have you ever done the work that they call booking and flagging?

A. I haven't done no booking, but I have flagged. I have flagged practically every week.

Q. What kind of flagging duties do you perform?

A. When 38 comes in from Birmingham.

Q. What is 38?

A. That is a freight train.

Q. That is a freight train?

A. Yes, sir, it be running kind of late on the schedule of the Seminole, and Mr. Davenport will send me, he'll send me to go back, if he don't have available a white man to send back, he makes me go back and flag the Seminole, double off of 38.

Q. Do you have the responsibility of a flagman when you do that?

A. That's right.

Q. That is flagging, isn't it?

A. Flagging a train off of the other one, that's flagging.

Q. Do you stay with that passenger train?

A. I stay there and bring him in behind that cut off of 38, after the man shoves in, I'm watching the light while he shoves in. I watch the light on around the yard, be on the engine of the passenger train, riding right in the yard.

Q. They assign you to do that when they don't have a white booker and flagger available to do that?

A. They don't assign me, but Mr. Davenport will get me to go around on the engine and flag it.

Q. What is Mr. Davenport's job?

A. He is the yardmaster.

Q. Although he tells you to do that when he needs you, you can't regularly bid on that job that involves booking or flagging?

A. No, sir.

Q. Do you know what these young white men that work in the yard do in the job called booking and flagging, what kind of work do they do?

A. They gets a list of cars as they pass by. If they are going to place a car at any place, they get that number, or that seal number, the car number and the initial of the car, and put the flagman's name at the bottom.

Q. Can you do that? Do you know how to do it?

A. If I had it to do I can do it, if I was qualified as a booker and flagger, I would do it.

Q. Do you know Ralph Smith?

A. Yes, sir.

Q. Who is he?

A. Ralph Smith is a colored fellow.

Q. Does he work there in the yard?

A. Yes, sir, he works in the yard.

Q. What job is he on now?

A. I think Ralph is on the 11:30 until 7:30 in the morning, I mean the night, until 7:30 in the morning.

Q. Has a colored man ever done the work that that white booker and flagger is doing?

A. Oh, yes, sir, they do it. Me and Ralph Smith worked together when I first went there. Me and Ralph Smith worked together 2 years, nobody but me and him and Mr. Dick Edwards.

Q. He was the white foreman?

A. He was the white foreman. Us worked on the brickyard cut for 2 years.

Q. You and another colored switchman?

A. Me and Ralph Smith and Mr. Edwards.

Q. Now they have one colored and one white?

A. Yes, sir.

Q. Is it the same work?

A. Yes, sir, same work.

Q. No colored man can now bid on that job that this white man is doing?

A. No, sir. He can bid on it, but he don't get no consideration.

Q. He can't get it?

A. He can't get it. He can just bid.

Q. You heard this testimony about this man Otis Ray this morning before we adjourned for lunch?

A. Yes, sir.

Q. Otis Ray is a colored switchman, is he?

A. Yes, sir, he is a colored switchman.

Q. Is he now on the extra board?

A. Yes, sir.

Q. Mr. Murray is a young white man, is he not?

A. That's right.

Q. Does he have less seniority than Ray?

A. Yes, sir.

Q. Murray is working on a regular job, is he not?

A. That's right, he is working on a regular job.

Q. They call that booking and flagging, and he gets to work regularly?

A. That's right.

Q. Does Ray lose work as the result of the fact he is on the extra board, does he get less work than Mr. Murray gets?

A. Yes, sir, he gets less work. They get some bookers and flaggers and runs them around them boys what did that booking and flagging, they run them around them boys like Homer and Ray. If they don't have a white man, they would get a white man that just got off the job and would turn him around.

Mr. Sadler:

We move to exclude that. I think that is obviously hearsay.

The Court:

I sustain the objection.

Q. Have you seen young white men working while—

A. Yes, sir.

Q. —these older colored men were on the extra board?

A. Yes, sir, more than a little, they do it every day.

Q. Is there a Mr. Gibson working there—first, is there a man named Waddell working there?

A. Yes, sir, E. D. Waddell.

Q. Is he a white man?

A. Yes, sir.

Q. Is he working on a regular job?

A. Yes, sir, I work with him every day.

Q. Do they call that a booking and flagging job?

A. Yes, sir, No. 1 booking and flagging.

Q. Does he do any different from what you do?

A. Yes, sir, he gets the list of the cars coming out. He catches the initial, or what the seal clerk sets down, just like we do. We catches them all the time. That's all he do. He lines them up for the tracks, Macon, Montgomery, Birmingham, and Augusta, Chattanooga, he lines the switch for them to go into different tracks.

Q. Do you have to do that sometimes?

A. Yes, sir.

Q. No colored man is permitted to bid on the job Mr. Waddell has?

A. No, sir.

Q. Who is Gene Flournoy?

A. Yes, sir, Gene Flournoy.

Q. What kind of work does he do?

A. Same as Mr. Waddell.

Q. Does he do the same kind of work as Mr. Waddell does?

A. Yes, sir, Gene does.

Q. His job is not called booking and flagging?

A. No, sir.

Q. He is just a switchman?

A. He is just a switchman.

Q. The white man who had seniority of Gene would be eligible to take Gene's job, would he not?

A. Yes, sir, he could take Gene's job most any time they get on it. Me and Major Threat and different ones be old switchmen. These young white boys can come out, they have somebody to bleed air, Mr. Woods can be off, they never exercise the old

seniority, the old man, they don't exercise his seniority at all. They give that to the youngest white boy on the roster for work. We can't bleed air.

Q. How about work extras, does that mean extra work?

A. If it is a train going out as a work extra, that doesn't have no—you know, don't have nothing on that work extra, nothing but white be on that extra.

Q. Are colored switchmen permitted to go out on that?

A. They used to, but they cut that out.

Q. What is the Sperry car?

A. That's the car that tests the rails.

Q. Are any colored switchmen permitted to work on that car?

A. No, sir, no colored on that car at all, unless cooks, or something like that.

Q. You are not a member of the Brotherhood, are you?

A. No, sir.

Q. And you have heard this testimony here. Colored switchmen are not permitted to be members of the Brotherhood?

A. No, sir.

Q. You have not been permitted to vote for their officers or their contracts?

A. No, sir.

Q. Do you have anything to say about how they conduct their business?

A. Not no way at all.

Mr. Cooper:

That's all.

Cross Examination.

By Mr. Sadler:

Q. What is your name?

A. Dock Rutledge.

Q. Now do you have any particular assignment in the Columbus yard?

A. Have an understanding? What you say?

Q. There was a lot of testimony about somebody being on the hill or bum job. Is your job designated as something?

A. Yes, sir, right around the yard, in the West end, that's all the designation. Work 10th Street to 15th Street, 2nd Avenue.

Q. Is that a regular job?

A. Yes, sir.

Q. You are not on the extra board?

A. No, sir.

Q. How long have you been on that particular job?

A. Oh, about 2 years, or 3.

Q. How long did you hold a regular job?

A. I've been holding a regular job a long time, about 10 or 11 years, or more.

Q. During the time that you have been holding a regular job has any white switchman rolled you off of your regular job?

A. I haven't been rolled off of a regular job since I have been on it.

Q. In so far as you are concerned, no white switchman has affected your job at all, has he?

A. Not nobody, not white or colored.

Q. You have been working for the railroad since 1936?

A. That's right.

Q. You mentioned you didn't do any booking, but you did some flagging?

A. That's right.

Q. Now you would flag about once a week you say?

A. Practically once every week.

Q. This 38 is a daily freight train, isn't it?

A. Yes, sir.

Q. On the days that you don't do any flagging, who does it?

A. Don't have no flagging, don't have to do any.

Q. Just when it comes in close to the schedule of the passenger train?

A. That's correct.

Q. The freight train would precede the passenger train through Columbus, is that right?

A. Sometimes.

Q. On the days that you do this flagging?

A. Yes, sir.

Q. You are working at the West Yard at that time?

A. Yes, sir, that's right.

Q. And they will get information that the passenger train is coming up close on to the schedule of the freight train?

A. Yes, sir.

Q. So you go down the track to some point and flag that passenger train, is that right?

A. If Mr. Davenport tells me, I do.

Q. If he tells you to?

A. Yes, sir.

Q. Just like, if there is a section crew working out on the section, out on the road, the foreman will sometimes send a man back with a flag, to flag a train and let them know that the crew is working out on the line?

A. No, sir, I haven't seen that. I don't be involved out with a crew that is working on the section.

Q. You know as a matter of fact, don't you, Dock, that that is done?

A. They might do it, the section crew might send his man, but he don't send me.

Q. The section workers are sent down the track to do the flagging?

A. I reckon they do. I don't have anything to do with that section crew.

Q. Once a week somebody asks you to go down and wave a flag at the passenger train?

A. Mr. Davenport asks me.

Q. Because the freight train is close by?

A. That's right.

Q. That's a temporary thing. How long does it take you to do that?

A. I do it according to how long it takes that freight train to clear up in that yard. I follow the freight train.

Q. Then you go back to the yard, to your regular duties?

A. That's right.

Q. You mentioned the name Flournoy. What sort of job does he hold?

A. He has the switching, just like I do. But he lines in the long field, the foreman has him to line the switches in the long field.

Q. He is a switchman?

A. Yes, sir.

Q. Does he work in the Columbus yard?

A. Yes, sir.

Q. Does he have a regular job?

A. Yes, sir.

Q. How long has he been working for the Company?

A. He has been there longer than I have, switching.

Q. As a regular job?

A. Yes, sir.

Q. Has any white man displaced him on his regular job?

A. I don't know about that, not on the job he has got.

Q. He has not been displaced by any white man on the job?

A. Not yet.

Q. He hasn't up until now, has he?

A. I said not yet.

Q. That covers how many years?

A. How many Gene has been there? I know I have been there about 19 years.

Q. Neither one of you have been displaced?

A. Not on these jobs we are on now.

Q. You said something about Flournoy lining the switches. I didn't understand what you were mentioning in connection with Flournoy and Mr. Woods.

A. Mr. Woods?

Q. Didn't you mention Flournoy and Mr. Woods together?

A. No, sir, I didn't mention them together. I said Mr. Woods, if it is his off day, if he is off a day, I said they never give an old switchman, a colored man a break, to bleed that air when Mr. Woods is off. They get the youngest white man to bleed the air. The older switchman, been there, all broke up, he can't get about, but they give that young white boy the job of bleeding the air.

Q. Mr. Woods has lost one arm?

A. Yes, sir.

Q. To assist Mr. Woods, the railroad has created a job that permits him to do nothing but bleed air on the train, is that correct?

Mr. Cooper:

We object to asking this witness that, unless they want to admit he is competent to testify about the railroad operations.

The Court:

I sustain the objection unless he knows.

Mr. Cooper:

He asked this witness why the railroad has done something.

The Court:

I will permit him to ask if he knows.

Q. You know that, don't you?

A. They come around with a paper.

Q. Do you know that?

A. I know some of it, some of how it come he is bleeding air.

Q. He has got one arm?

A. Yes, sir.

Q. You want to bid in the job of bleeding air on the day Mr. Woods is off?

A. I don't want to bid on the job, it just looks like he ought to let us exercise our seniority and take that job.

Q. Rather than have somebody else—

A. Rather than have the young white man that ain't been there but about seven or eight years to

bleed air, he ought to let some of us that have been there 30 or 40 years.

Q. That is the only job of that type where that one man has the job of bleeding air off the train?

A. That's the only man until the night crew come on. They have a night crew man and a day crew.

Q. That is Mr. Woods?

A. Mr. Woods. They done started another man bleeding air.

Q. He is a one-armed man?

A. Yes, sir.

Q. You haven't filed any request in writing with the Company to be permitted to take Mr. Woods job, have you?

A. No, sir, I haven't.

Q. Mr. Cooper asked you about work trains going out. Do those trains have any switchmen on them?

A. No, sir, not no—what do you mean by work trains?

Mr. Rives:

You mean the Sperry car?

Q. The work trains that your lawyer talked about.

A. They have some work trains that stays around the city limits that they don't go out on. I don't know about the trains on the road, but they have trains doing ditching, and such things as that around the city limits, I mean the yard limits. They don't have colored on them now. They used to, but they don't now.

Q. Those are the trains that you have reference to that only white people go out on?

A. Yes, sir.

Q. Do you know that it is a fact that that was ordered by the National Board of Adjustment?

A. No, sir, I don't know about that.

Mr. Sadler:

I believe that's all.

The Court:

All right, Mr. Rives.

By Mr. Rives:

Q. Now, Dock, I believe you say that you have done the work of flagman, although you are a switchman?

A. That's right.

Q. That consisted of flagging No. 38 when the Seminole was—

A. I ain't flagged 38, I flagged the Seminole.

Q. Flagged the Seminole when No. 38 was not far ahead?

A. That's right.

Q. That is the work of a flagman that you do practically every week you say, is that right?

A. Yes, sir.

Q. Well now have you ever been out on the road with a road crew and done the work of a flagman?

A. I don't work out on the road, I'm a yard man.

Q. Do you know anything about wheel reports?

A. I don't do nothing but switchman, I ride boxcars, and that's all I do, other than what the yardmaster tells me to do.

Q. Do you know what a wheel report is?

A. No, sir.

Q. Do you know whether a flagman has to make wheel reports?

A. I am not a flagman, I don't know.

Q. You don't know?

A. I don't know, I'm not a flagman.

Q. You said you had done the work of a flagman. You don't mean that you have done the work required of a flagman out on the road?

A. No, sir.

Q. All you have done is flag a train like a section man would do, when they work on the track?

A. That's right.

Q. That's the only flagging you have ever done?

A. That's all.

Q. You don't know what information has to go in a wheel report, or where they get the information? As a matter of fact, you don't know anything about it, do you?

A. No, sir, I just go out and flag like Mr. Davenport tells me to.

Mr. Rives:
That's all.

(Witness excused.)

The Court:
Take a 15 minute recess.

(A recess was had.)

The Court:
Call your next witness.

EMMETT BUGG, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. Your name is Emmett Bugg?

A. Emmett Bugg.

Q. And you work for the Central of Georgia, the Defendant in this case?

A. Yes, sir.

Q. One of the Defendants in this case?

A. Yes, sir.

Q. Where do you work?

A. Braking.

Q. Where are you working now?

A. I am working on the Southwest, in the Macon and Albany Division.

Q. In the Macon Division?

A. Yes, sir, it is the Macon Division, Atlanta, Albany, and Columbus.

Q. You are a brakeman?

A. Yes, sir, I'm a brakeman.

Q. Are you working regularly or are you on the extra board?

A. On the extra board.

Q. Are there any white men with less seniority than you who are working on your Division regularly?

A. No, sir.

Q. Are there any white flagmen that are working regularly in your Division?

A. No, sir.

Q. Who is Mr. Worthy?

A. He is flagman and brakeman.

Q. Does he work in your Division?

A. Yes, sir.

Q. Does he have seniority over you?

A. Yes, sir.

Q. Can you state whether or not he has ever by exercise of his seniority kept you from getting a run?

A. Yes, sir.

Q. State to the Court just how that happened?

A. Well on the 3rd or the 4th day of June—

Q. Was that this year?

A. Yes, sir.

Q. All right.

A. The dispatcher called me at 11:00 o'clock in the day, and told me don't get nowhere, he might need me if he would flag.

Q. If who would flag?

A. If Mr. Worthy would flag. When he called I said "He ain't going to flag if he knows I'm going." He said "Stay around the house, stick around, don't get out of place, he might take his choice and flag."

About 2:30 he called me and told me "You won't get on it, Emmett, he has taken the job braking." They got a Savannah Division flagman to go on the job on my Division.

Q. They took a man from out of the Division?

A. Yes, sir.

Q. To do the flagging job?

A. Yes, sir.

Q. And let Mr. Worthy, a senior white man, do the braking job?

A. Yes, sir.

Q. That left you without any job?

A. Yes, sir.

Q. Seniority goes by Division, doesn't it?

A. Yes, sir.

Q. A man from another Division, like the one they brought over, actually doesn't have any seniority on your Division?

A. He don't have any over there, no, sir.

Q. Do you know a Mr. Edwards, or Mr. Lemley, working on your Division?

A. Yes, sir.

Q. What kind of work do they do?

A. Braking and flagging, baggage master.

Q. Are they working regularly?

A. No, sir.

Q. Do they have more or less seniority than you do?

A. Lesser than I do.

The Court:
Who were those?

Mr. Cooper:
Edwards and Lemley.

The Court:
Lemley?

Mr. Miller:
Linder.

Q. Are Mr. Edwards and Mr. Linder on the extra board?

A. Yes, sir.

Q. Has either Mr. Linder or Mr. Edwards ever gotten a job which was your turn to have, but which you couldn't take because it was flagging?

A. Yes, sir.

Q. Do they do that regularly?

A. Yes, sir.

Q. Have you ever worked as a flagman?

A. No, sir.

Q. Did you stand the examination that trainmen took?

A. Not any flagman.

Q. What kind of examination did you stand?

A. Well the signaling, I stood it from the trainmaster.

Q. Have you ever been given an opportunity to train as a flagman, to work with another man and learn the job of flagman?

A. No, sir.

Q. Is that the way the white flagmen learn?

A. Yes, sir.

Q. They let them train for a time, and then they work regularly as flagmen?

A. Yes, sir.

Q. Is Eufaula in your Division?

A. Yes, sir.

Q. What is the situation up there? Do you have any old white flagmen that move up and take the braking job?

A. Yes, sir.

Q. Who is that?

A. Mr. Braun.

Q. Mr. Braun?

A. Yes, sir. I don't know his first name.

Q. When he does that, does a junior white man work on the flagging end of the train, when Mr. Braun or whatever his name is, moves up?

A. Yes, sir.

Q. Does the white man that is junior to you get that work?

A. Yes, sir, he is younger than I am.

Q. Younger than you?
A. Yes, sir.
Q. Do you know his name?
A. Yes, sir.
Q. What is his name?
A. Mr. Beasley.
Q. Did you tell us about when that was that they brought this white man over from another Division to work in your Division, your best recollection?
A. My best recollection it was in June, the 4th or 3rd of June.
Q. Was that of this year?
A. Of this year.
Q. You are still on the extra board now?
A. Yes, sir.
Q. And you get no jobs that come up for flagging?
A. No, sir.
Q. And white men who have less seniority than you can take those jobs?
A. Yes, sir.
Q. And do take them?
A. Yes, sir.

Mr. Cooper:
I believe that's all.

Cross Examination.

By Mr. Sadler:
Q. How long have you been working for the Company?
A. This time 12 years, but I first went there in 1918. I went away with a ship company.
Q. Your seniority at this time is 12 years?

A. 12 years.

Q. As a brakeman?

A. As a brakeman.

Q. You were employed by the Company as a brakeman?

A. Employed as a brakeman.

Q. At the time you were employed as a brakeman there were white trainmen that would flag on occasions, and would also operate as a brakeman on occasions?

A. Yes, sir.

Q. That was true when you were employed, and you knew it?

A. Yes, sir.

Q. And that is true today?

A. Yes, sir.

Q. There has been no change in that from the time you were employed until now?

A. No, sir, there hasn't been no change.

Q. You mentioned one incident in this 12 year period where they brought a man from the Savannah Division over?

A. Yes, sir.

Q. That was an isolated instance, that is the only time that you know that has happened, isn't it?

A. No, sir; that is the only time I remember being brought from another Division, but I have had them come in with men on my own Division.

Q. That's the onl ytime you remember where he came from another Division?

A. Yes, sir.

Q. Do you remember what train number that was?

A. 35, Albany.

Q. And your recollection is it was June what?

A. June 3rd or 4th, one or the other, one of them days.

Q. And that was train No. 35?

A. Yes, sir.

Q. I believe in so far as any person, any white person with seniority less than yours is concerned, they have never taken your place as brakeman, have they?

A. No, sir, not as I know of.

Mr. Sadler:

We have no further questions.

Mr. Rives:

No questions, Your Honor.

The Court:

All right, you may come down.

(Witness excused.)

The Court:

Next witness.

WILLIE LAWTON, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Black:

Q. State your name so the Reporter can get it.

A. Willie Lawton.

Q. Do you work for the Defendant Railroad here?

A. Yes, sir, I do.

Q. What Division do you work in?
A. Macon Division.
Q. Macon Division?
A. Macon Division.
Q. What kind of job do you hold?
A. Brakeman.
Q. How long have you been a brakeman with the Company?
A. Since February 6, '37.
Q. Where do you live, Willie?
A. Dothan.
Q. Have you a wife and family down there?
A. Yes, sir.
Q. Do you make your home there?
A. I have.
Q. What do you do in your job today?
A. My job is cutting cars, making couples.
Q. How many men do you work with?
A. Two.
Q. What kind of jobs do they hold?
A. Well one is the conductor, and the other is flagman.
Q. You say one is a conductor and one is a flagman?
A. Yes, sir.
Q. What is the name of the flagman that you work with today?
A. His name is Mr. Tommy Burnett.
Q. What does he do in his job?
A. When I kick a car up the track, he holds it up there to keep it from coming back on me.
Q. Does he do any of the booking and flagging that you have heard so much talk about today?
A. No, sir.

Q. Does he do the same thing that the white man who has worked with you has been doing for a number of years?

A. Yes, sir, he do the same thing.

Q. How long have you been on this particular job that you are doing?

A. About seven or eight years.

Q. In 1953 were you rolled by A. C. Cane?

A. Right, sir.

Q. Now is he a colored man?

A. Yes, sir.

Q. Who was working with you on the Dothan train at that time, what white man was working as flagman?

A. Mr. Coxwell.

Q. Did you have more seniority than he did?

A. Yes, sir.

Q. When A. C. Cane rolled you did you roll Mr. Coxwell?

A. No, sir, I did not.

Q. Why didn't you roll Mr. Coxwell when you had more seniority than he did?

A. I couldn't, because he is a flagman.

Q. Did Mr. Coxwell, had he been doing any booking and flagging that you know of up to that time?

A. No, sir.

Q. When you were rolled by A. C. Cane, what did you do then?

A. I went to Eufaula.

Q. Went to Eufaula?

A. Yes, sir.

Q. Did you roll somebody over there at Eufaula?

A. Yes, sir.

Q. And you got a job as brakeman?

A. Got a job as brakeman over there.

Q. What train did you go on?
A. 80 and 81.
Q. How long did you stay on 80 and 81?
A. I stayed on there about three or four months, the best I can get at it.
Q. When you were working on 80 and 81 was there a white flagman working with you?
A. Yes, sir.
Q. Now what was his name?
A. His name was Mr. Fain.
Q. Mr. who?
A. Mr. Fain.
Q. Did he have more or less seniority than you?
A. Less.
Q. Less seniority?
A. Yes, sir.
Q. When you stopped working on 80 and 81, what happened, why did you stop?
A. I stopped on 80 and 81, and went home.
Q. Do you recall that—
A. No, I believe—let me correct that, please, sir.
Q. Do you know Mr. E. C. Robinson?
A. Yes, sir.
Q. Is he a white man or colored man?
A. White.
Q. Did Mr. E. C. Robinson ever roll you?
A. Yes, sir.
Q. What job did he roll you from?
A. Off of 80 and 81.
Q. Did you roll Mr. Fain off of his job on the other end of the train?
A. I couldn't, sir.
Q. Because he was a flagman?
A. Yes, sir.
Q. What happened to you then?

A. I went back home.
Q. You went back home?
A. That's right.
Q. Did you put a bid in for another job?
A. Yes, sir.
Q. Where was that job?
A. That was on 86 and 85.
Q. Was that at Eufaula too?
A. Eufaula was the destination there, but it went to Macon.
Q. It started from Eufaula and went to Macon?
A. Right.
Q. Did you have to move on back over to Eufaula for this job on 86?
A. Yes, sir, I had to move back over there.
Q. How long did you stay on 85 and 86?
A. I stayed on there about two months.
Q. Until January, when A. C. moved back?
A. Yes, sir.
Q. When he moved back to Albany, what did you do?
A. I drew the job back at Dothan, back home.
Q. Have you ever been rolled any other time except the two you just mentioned?
A. Yes, sir, I was rolled then again.
Q. When were you rolled again?
A. By Mr. Hill.
Q. What was his first name?
A. R. C. Hill.
Q. When did this take place?
A. That taken place, I would say, I was there—I don't remember, about a month and a half or about seven weeks ago I'll say.
Q. Was Mr. Hill a white or colored man?
A. Yes, sir.

Q. Did he have more seniority than you did?
A. Yes, sir, just up above me.
Q. Before you were rolled by Mr. Hill, were you working with a white flagman?
A. Yes, sir.
Q. Who was that white flagman, do you recall?
A. I can't think of his name right now.
Q. Did he have more or less seniority than you did?
A. He had less.
Q. When Mr. Hill rolled you, did you roll this white flagman?
A. No, sir.
Q. What did you do?
A. I had to go back to Eufaula.
Q. How long did you stay there that trip?
A. I stayed there about five days.
Q. Then what happened?
A. Mr. Hill went to Fort Valley.
Q. You went back and got his job?
A. I went back to Dothan.
Q. When you were in Eufaula, did you have any extra expense over there?
A. Yes, sir.
Q. Will you tell the Court approximately what they were a week?

Mr. Sadler:
Is that material to the hearing now?

Mr. Cooper:
We don't care to prove the amount.

Mr. Black:
I want to show he was damaged.

The Court:
I will let you show he had expense.

Mr. Black:
That's all I wanted to do.

Q. Willie, do you know anything about work trains?
A. Yes, sir.
Q. What is a work train, what does it do?
A. A work train goes out on the line of road, such as picking up steel, digging ditches. That's what they call a work train, in other words it runs by extra flags.
Q. What kind of crew do they have in work trains?
A. White.
Q. Do they have anybody who does what you ordinarily do on those work trains?
A. Supposed to, but they doesn't do it, they doesn't have a brakeman, they have two white flagmen.
Q. What do they do that you don't do in your job?
A. It ain't—

Mr. Sadler:
If he has never been on there, how can he testify?

Mr. Black:
He hasn't said he has never been on there.

The Court:
He can't testify what he doesn't know.

Mr. Sadler:
He said they didn't have anybody but white people on there.

Mr. Black:

He said he knew something about work trains. Mr. Sadler is assuming he doesn't know anything about it. If he doesn't know anything about it, Mr. Sadler will point that out.

The Court:

You raised the point by objecting.

Mr. Sadler:

Yes, sir, I certainly do. He testified he hadn't been on one.

The Court:

I sustain the objection.

Q. Have you ever worked on a work train?
A. No, sir.
Q. Have you ever seen them go out?
A. Yes, sir.
Q. Have you ever been on them after they got out?
A. No, sir.
Q. Willie, are you a member of the Brotherhood?
A. No, sir.
Q. The Defendant Brotherhood?
A. No, sir.
Q. Have you ever been consulted about the contract that the Defendant Brotherhood works under?
A. No, sir.
Q. Have you ever even gotten a copy of that contract?
A. No, sir.
Q. Has anybody ever offered to give you a copy of that contract?
A. No, sir.

Q. What grade in school did you go through?
A. I quit school at the 5th grade.
Q. Can you read and write?
A. Yes, sir.
Q. Have you been right along with any white flagmen who did any booking and flagging?
A. Yes, sir.
Q. What job was that that you saw booking and flagging done on?
A. That was on 30 and 65.
Q. On what?
A. 30 and 65, in other words it is a 29 and 38, 30 and 65, from Albany to Columbus.
Q. You have worked on that train?
A. Yes, sir, I stayed on that train about 3 years.
Q. Did you see this so-called booking and flagging done on that train?
A. Yes, sir.
Q. Do you know actually what operations are involved in booking and flagging?
A. Yes, sir.
Q. Can you do them?
A. Yes, sir, if I was qualified.
Q. Well, by "qualified" you mean if they would let you do it?
A. Yes, sir.

Mr. Black:
Your witness.

Cross Examination.

By Mr. Sadler:
Q. As I understand you, Willie, you first were employed in February, 1936?
A. Right, sir.

Q. You made application for brakeman, didn't you?

A. That's right.

Q. You were employed as a brakeman?

A. As a brakeman.

Q. What was the first assignment after you were employed?

A. The first?

Q. Were you on the extra board?

A. I was on the extra board 2 years exactly.

Q. So you were on the extra board for 2 years after you were first employed?

A. Right.

Q. When a job came open as a brakeman you bid in that regular job and left the extra board, is that correct?

A. That's right.

Q. When your seniority as a brakeman entitled you to, you then bid in a regular job?

A. Right, sir.

Q. You bid that in ahead of white men that were junior to you, that is correct, isn't it?

A. Bid in what?

Q. You bid in the brakeman's job ahead of white men who were junior to you?

A. Yes, sir.

Q. They didn't take a white man that was junior to you and promote him up to that job in ahead of you?

A. No, sir, they didn't take him.

Q. When that time came up, you got to bid in a regular job of brakeman?

A. Yes, sir.

Q. At the time you were employed in 1937, white men that were working as flagmen also bid in a brakeman's job, didn't they?

A. That's right.

Q. They had been doing that a number of years before you were employed, isn't that correct?

A. Yes, sir, they bid them in then.

Q. When you were employed by the Central of Georgia you knew you were employed as brakeman?

A. Yes, sir.

Q. And you would not be permitted to bid in jobs as a flagman?

A. That's right.

Q. That was true when you started work and is true today?

A. Yes, sir.

Q. There has been no change in your situation?

A. No, sir.

Q. From the time you started work until now?

A. No, sir, no change.

Q. Now you mentioned several instances where a person rolled you on your job.

A. Yes, sir.

Q. The person that rolled you on your job has been with the Company longer than you had at the time you were rolled, is that correct?

A. He had been hired as a flagman a little longer than I had, but he hadn't been with the Company longer than I had.

Q. He had been with the Company longer than your seniority from 1937?

A. That's right.

Q. Your seniority starts in 1937?

A. As brakeman, yes, sir.

Q. And the person who rolled you in each instance had seniority with the Company before February, 1937?

A. Right.

Q. No person, white or colored, that had seniority after 1937 has rolled you off of any of your regular jobs, have they?

A. Not younger than I am.

Q. Every one of them have been senior?

A. Every one was senior, yes, sir.

Q. That was true with respect to train 80 and 81 and train 85 and 86 and the other one that you mentioned, that's right, isn't it?

A. Yes, sir, that's right.

Q. And you mentioned now that in certain of those instances there was a white flagman on the train that was junior to you?

A. Right.

Q. And at the time you were rolled you were not permitted to bid in that job as a flagman?

A. That's right.

Q. At the time you began employment with the Company colored brakemen were not permitted then to bid in jobs of white flagmen?

A. That's right.

Q. You mentioned doing some booking and flagging. That, as a matter of fact, is in the yard, and not on the main line, wasn't it?

A. What are you going to do with the flagman on the train?

Q. Don't you understand the phrase "booking and flagging" has to do with yard work, and not main line work?

A. Sir, you tag the train, the flagman has to tag the train when he leaves town. The flagman has got to tag his train.

Q. What does he do in tagging a train?

A. He has a book that he gets from the yard office, keeps all records.

Q. That is the flagman?

A. Yes, sir, he takes his book and goes down his train and tags them all, gets the seal numbers, gets the destination, where it's going. That's how he can tell how many shorts he has, whether it is all through stuff or not. That's what we call booking.

Q. That is in the road service?

A. That is on the line of road, yes, sir.

Q. That is the conductor's responsibility, isn't it?

A. Well, I guess so, but the flagman does it.

Q. The flagman does it?

A. The flagman does it.

Q. The conductor would delegate that to the flagman?

A. Sir?

Q. The conductor would delegate that to the flagman?

A. I guess so.

Q. You say that on occasions the conductor has asked you to do that, is that right?

A. He haven't asked me.

Q. You never have done that?

A. Never have.

Q. Never have done any of that?

A. No, sir.

Q. That has been the flagman's job?

A. That's right.

Q. And as brakeman you never have done that?

A. Brakeman, no, sir.

Mr. Sadler:

I think that's all.

The Court:

When you were rolled off the job that you referred to, and younger men were on the flagmen's jobs, did

you apply for a job and try to roll them or did you just assume you couldn't roll them?

The Witness:
No, sir, I just assumed I couldn't roll them.

Mr. Black:
The contract, in terms says he couldn't do it, the written contract.

The Court:
All right.

By Mr. Rives:
Q. Willie, I believe you said you live at Dothan, Alabama?
A. Dothan, Alabama, yes, sir.
Q. Since February 6, 1937 you have been employed by the Central of Georgia as a brakeman?
A. As brakeman.
Q. I believe you testified that you work on this local freight, is that right?
A. That's right.
Q. Is that the switch local between Dothan, Slocomb, and Blakely?
A. No, sir, they don't run a switch local, they run a freight local, but it is between Albany and Dothan. This job, I guess what you are talking about, is right in Dothan.
Q. You are on the local between Albany and Dothan?
A. At Dothan, not between Albany and Dothan, but at Dothan, right there in the territory.
Q. You are what?
A. Dothan switch local.

Q. Switch local that operates between Dothan, Slocomb, and Blakely, is that right?

A. They don't go to Slocomb, no where but right in the city limits of Dothan. It doesn't go to Slocomb.

The Court:

You are just working in the switch yards at Dothan?

The Witness:

Yes, sir, in the city limits at Dothan.

Q. You don't go out on the main line?

A. Don't go out on the main line, no, sir, don't go out of the yard limits.

Q. Do you have a caboose on your train?

A. No, sir.

Q. Willie, although you don't operate out of the city limits of Dothan, you have rights as a brakeman over to Blakely and Slocomb, don't you?

A. No, sir. See, from 2 miles of Dothan it belongs to another Company. They sold out down there. I don't have no right to Slocomb. If they were to run up to Blakely, I would still be on that job.

Q. In other words, if they ran that train of yours to Blakely, you would have rights as a brakeman?

A. Over that.

Q. Over to Blakely?

A. Yes, sir.

Q. And the same is true to Slocomb?

A. Yes, sir.

Q. As a matter of fact doesn't the Central of Georgia Railway Company pay you every day for going to Blakely, although you don't go to Blakely?

A. They pay me for working in Dothan.

Q. You don't know about that? You didn't know they paid you for going to Blakely, did you?

A. If they did, they ain't said nothing to me about it.

Q. All right. Now you say that you are competent to do the job of flagman on your crew?

A. Yes, sir.

Q. But you never have done that job?

A. No, sir.

Q. And you say that the flagman on that job does the booking and flagging, doesn't he?

A. No, sir.

Q. He doesn't?

A. We don't have no one to do that.

Q. You don't have anybody to do that?

A. No, sir.

Q. You are working in the yard, aren't you?

A. Certainly.

Q. And you say that the flagman doesn't do any booking and flagging?

A. No, sir

Q. Don't you know that he makes up a cut list for use of the other members of the crew in switching cars?

A. He don't make up none.

Q. He doesn't make up any?

A. No, sir.

Q. Who makes it up?

A. The conductor goes to the office and gets a guide. He's the one that handles it.

Q. The conductor?

A. That's right.

Q. Have you ever seen the flagman handle that guide?

A. No, sir.

Q. What about the placement records, that is in the records showing where the cars are placed and the various initials?

A. He tells us.

Q. And the time they are placed there, who makes up that record?

A. The conductor.

Q. Have you ever seen the flagman do that work?

A. No, sir.

Q. You don't know that he hasn't done it, do you?

A. If he did, he ain't done it on that job.

Q. Do you stay with the flagman all the time?

A. I am right there where I can see him.

Q. What do you do, follow the engine?

A. That's right.

Q. You are up next to the engine?

A. I can tell what he is doing though.

Q. He is out in the field, isn't he?

A. Yes, sir.

Q. The flagman is out in the field?

A. Yes, sir.

Q. You are up at the engine?

A. That's right, I'm up there cutting cars.

Q. You pull the pins, uncouple the cars and let them roll?

A. Yes, sir.

Q. Frequently you don't know where the flagman is?

A. Yes, sir, I have to know where the flagman is.

Q. And you say that he never has made out one of these records?

A. If he have, I haven't seen him.

Q. The conductor always does that?

A. Yes, sir.

Q. Have you ever seen the flagman assist the conductor in telling you where to switch the cars?

A. No, sir, I ain't seen the flagman do that.

Q. What about the wheel reports, do you know what a wheel report is?

A. I haven't—no, sir, I'm not familiar with it, I haven't had a chance to learn on that.

Q. Your conductor, does he handle wheel reports?

A. He makes out all reports.

Q. Do you know whether he ever has any flagman to make out any of those reports?

A. No, sir, I don't know.

Q. You don't know what is put in a wheel report, do you?

A. No, sir.

Q. You don't know who is supposed to make up wheel reports, do you?

A. The conductor, that's his work, I mean.

Q. You don't know whether he frequently has the flagman do that or not, do you?

A. Well, no, sir, I don't know, because when we quit work I goes home, and they are there in the office.

Q. You mean the flagman and the conductor?

A. Yes, sir.

Q. They go in the office?

A. They go in the office.

Q. They do the paper work and you go on home?

A. Usually the conductor does all of the work though, I know that.

Q. The flagman usually goes to the office with him, doesn't he?

A. He goes to the office with him, yes, sir.

Q. And so far as you know, the flagman does make it up?

Mr. Cooper:

We object to that. He couldn't possibly know if he is not there.

The Court:

I sustain the objection.

Q. Have you ever asked anybody for a copy of this contract between the Central of Georgia and the Brotherhood?

A. No, sir.

Q. You never have asked for it?

A. No, sir.

Q. You have seen one though, haven't you?

A. A copy of it?

Q. The contract that you work under.

A. I have seen an old one, but I wasn't lucky enough to get hold of one. Nobody gave me one.

Q. You didn't ask for one, did you?

A. No, sir, I didn't ask for one.

Q. But you have seen one?

A. I have seen one.

Q. Well do you read the bulletin board?

A. I do.

Q. Do you recall that when the 1952 contract was entered into that you saw a bulletin put on the bulletin board instructing the employees to call upon their supervisors and get a copy of the contract?

Mr. Black:

We object to that on the ground the best evidence of that would be the bulletin itself.

Mr. Rives:

He said he read it.

The Court:
What is the date of the contract involved?

Mr. Black:
If he said he read it, I move to exclude it. The best evidence is the thing itself.

The Court:
Are you talking about the '52 contract? Is that the contract that is involved here?

Mr. Cooper:
Yes, sir, that is the contract that the answer admits is in effect now.

The Court:
You were referring to the '53 contract, actually?

Mr. Cooper:
They have amitted both, the existence of both of those clauses set out in the complaint. They specifically admitted that the current contract in effect, which is the 1952 contract, contains Article 26 which we have set out there.

The Court:
All right.

Q. Did you read the bulletin to the effect that employees could call on their supervisors to get a copy of this contract?
A. I don't think so, sir. At that time when those contracts was sent around, I am quite sure that maybe I would have got hold of one, but I was moved around and over at Eufaula they didn't say

anything about it, so when I got back to Dothan to read the bulletin where the contracts were out, why they were all gone, so I didn't have any.

Q. You didn't go after one?

A. I didn't ask for one, there wasn't no use to ask at that time, it was gone. I think there wasn't but three sent to Dothan.

Q. Now do you know that? You know there wasn't but three?

A. Wasn't but three copies.

Q. Who got those?

A. A. C. Cane got one.

Q. He is one of the Plaintiffs in this case?

A. That's right.

Q. Who else?

A. A. C. Cane got one, and I can't think of his name, but Mr. Gibson any how.

Q. You saw A. C. Cane's, didn't you?

A. I think so.

Mr. Rives:

All right. That's all, Your Honor.

Mr. Black:

We have no further questions.

The Court:

All right, you may come down.

(Witness excused.)

Mr. Cooper:

If the Court please we would like to request just a few minutes. I think that's all we have got to put on today. We have two men that are not here today

but will be here in the morning. I don't think they will take very much time. Since we are trying it without a jury, if you want to take up some of their witnesses, to use this time—

The Court:

Do you want to check to see if you want to put another witness on at this time?

Mr. Cooper:

No, sir, I don't want to put another witness on at this time. I can check tonight to see if I have missed anything. But we have these two men that will be here first thing in the morning. I was going to suggest since we were trying it without a jury, we don't have any objections, if you are agreeable, to taking their testimony a little bit out of order.

The Court:

Are you gentlemen ready to proceed at this time?

Mr. Miller:

The Central of Georgia is the first named Defendant. We have discussed with the other Defendants the procedure, and it has been suggested that as we are the first named Defendant that we take our testimony in that order.

The Central contemplates at this time introducing only one witness, and that is our Director of Personnel, Mr. Collins. We anticipate his direct testimony may consume as much as an hour and a half to two hours, and cross examination of course, only time will tell how long that will take. We would really prefer to have all of his testimony at one

time, rather than cutting it up by an afternoon session and morning session. Of course we will follow the wishes of the Court.

The Court:
Will that testimony likely be such as to make it necessary to recall him to answer something that the witnesses testified to in the morning?

Mr. Miller:
Yes, sir, that may be true also.

The Court:
We are not far from adjourning time. We could go on for about 45 minutes, we usually adjourn about 4:30. How many witnesses do you have, Mr. Rives?

Mr. Rives:
Not over three, Your Honor.

The Court:
We will be able to finish this case tomorrow?

Mr. Rives:
One of them will be very short.

The Court:
We will adjourn until 9:00 o'clock in the morning.

(Whereupon, at 4:00 p. m. an adjournment was taken until 9:00 a. m., Wednesday, October 20, 1954.)

Wednesday, October 20, 1954,
at 9:00 a. m.

The Court:
Are you ready to proceed?

Mr. Cooper:
The two we expected have not yet arrived, but they should be here at any time. I believe there is a train that gets in at 9:20 that they are most probably on. They had to come a great distance, and I suggested to Mr. Miller, and he is agreeable, that he should go ahead out of order with his witness, with my agreement that of course if he needs to put him back on to reply to anything these two men testify to, he may do so.

The Court:
All right.

W. J. COLLINS, called as a witness by and on behalf of the Defendant, Central of Georgia Railway Company, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:
Q. Will you state your name, please?
A. W. J. Collins.
Q. Mr. Collins, what is your present employment?
A. Director of Personnel for the Central of Georgia Railway.
Q. That is the Central of Georgia Railway Company that is one of the Defendants in this case?
A. Yes, sir.
Q. Mr. Collins, how long have you been railroading?
A. Since May 2, 1905.

Q. When did you first become employed by the Central of Georgia Railway Company?

A. May 2, 1905.

Q. Have you been employed by the Central of Georgia continuously since that date?

A. No, sir. I had a break from about 1908, 1907 until 1912, I worked for the Louisville & Nashville Railroad, and for the Atlanta & Saint Andrews Bay Railroad, and came back to the Central in 1912.

Q. What position were you employed for when you first became employed by the Central?

A. I was a telegraph operator.

Q. Will you just briefly state the various positions you have held with the Central of Georgia since the date you were first employed?

A. Yes, I was first an operator and agent, local agent, I was a train dispatcher, extra, never was a regular dispatcher, but I worked extra as train dispatcher, and I was a brakeman, flagman and a conductor on the Southwestern Division in 1912.

Q. When did you first leave the ranks in road service and become an official of the Company?

A. Well I was on leave of absence with the Company from 1919 until February 1, 1943. The reason for the leave of absence, at that time I was General Chairman for the Brotherhood of Railroad Trainmen on the Central of Georgia from about 1917, and in 1919 the job was put on a regular salary and they gave me a leave of absence so long as I remained in that position.

And on February 1, 1943 I went back to work for the Central.

Q. What was your position with the Central in '43?

A. Assistant to the General Manager.

Q. Were you in personnel work at that time?

A. Yes, sir.

Q. Have you been in personnel work for the Central since 1943?

A. Yes, sir, continuously.

Q. Mr. Collins have you checked the seniority dates of the various named Plaintiffs in this action?

A. Yes, sir.

Q. Do you have any records with you from which you can testify as to the seniority dates of these Plaintiffs?

A. We have the application of some of the employees; I think practically all of them.

Q. Do you have available a copy of our answer in this case which sets out the seniority date?

A. Yes, sir.

Q. Will you get those available there?

Mr. Cooper:

I think we have checked those dates with the men, and they are correct so far as we know. We will stipulate those dates in the answers are the dates.

Mr. Miller:

That will be all right. Will you also stipulate the dates in our answer to your amendment?

Mr. Cooper:

Yes. We have not had a chance to check those, but I assume they reflect the Company's records, and we will stipulate that.

The Court:

All right.

Mr. Miller:

All right, sir.

Q. Mr. Collins, did any one of those seniority dates go back beyond 1919?

A. I don't think there was. As I recall it, I am pretty sure, we will check it if that is not correct, there is not a one of them back beyond 1919. They are all subsequent to that date, according to my memory.

Q. You have heard the term "trainmen" used in this proceeding. Will you describe to the Court your concept, based upon your experience, as to the meaning of the term trainmen as used in connection with the contract of employment with the Plaintiffs in this case?

A. Well, the term trainman is used in the agreement or contract, which is generally used everywhere, for that matter, for designating the various classes of crafts, so to speak, represented by the organization that is the trainman's organization, in other words they represent a good many crafts, five or six.

Q. Will you itemize those crafts that are represented by the Railroad Trainmen as that term is used in the contract?

A. Yes, sir, they represent, and the word covers yard foremen, as we call them, some people call them yard conductors, but they are designated as yard foremen in our contract; yard switchmen; and switch tenders; and—

Q. Are all of those yard service employees?

A. Yes, sir, all of those are yard service employees represented by the trainmen.

Q. Are there any other yard service employees represented by the trainmen that comes within that term?

A. No, sir, those are the three. Then in the road service the term covers flagmen, baggage men, and brakemen.

Q. Now is there any other road service type of craft or job that is covered by that term other than those three?

A. Well, it is generally referred to, when you are talking about the conductors, in a great many instances, as trainmen. In other words, they say "trainmen", when maybe they would be talking about everybody, but the individual contract that I am speaking of which they speak for and are the representatives, covers the three crafts, that is the brakeman, flagman and baggage man.

Q. We have already gone into some detail on the functions of these various positions, but will you briefly state to the Court the functions of a brakeman? He is in road service, I understand, not yard service?

A. Yes, sir, that is correct.

Q. Briefly what does he do?

A. Well he is, you might call him outside of the railroad circles, a train hand. He is one of the men that is on the train to cut the cars off and help do the switching, and all of the functions that have to be done in the work.

Q. Does he serve on a passenger train or is he just in freight service?

A. Well we don't have on our railroad any passenger brakemen at this time. Unless it was a rare occasion of a special or something like that, we have what we call a passenger train flagman.

Q. Yes, sir.

A. And on some of the runs we have in addition to that a train porter or a baggage master on most of the trains.

Q. What are the duties of a flagman, briefly?

A. Well, his duties are more or less interlapped. He assists the conductor to do whatever he is in-

structed to do. The conductor is in charge of the whole train, just as the captain of a ship, but his main duty, the principal duties are that he rides on the rear of the train, goes back to protect the train by flag when it is stopped, looks out for anything that might be wrong with the train, such as a brake lever dragging or hot box or anything, and he makes out the report that the conductor is required to make. Most of them do that, I think pretty well all of them, to learn all of the things that are incidental to finally becoming a conductor.

Q. You say learning the things that are usually done, or that a conductor does. The flagman sticks pretty close to the conductor?

A. Yes, sir.

Q. He stays in the caboose and the conductor stays in the caboose?

A. Yes, sir.

Q. The brakeman stays on the engine when he is not off the train?

A. Yes, sir, he mostly always rides the engine. In fact we have prepared a seat, a place for him on the engine, and he is available, he rides on the engine where he is right handy with the engineer and fireman.

Q. You say the flagman more or less understudies the conductor. When you refer to the "conductor", you mean a road conductor?

A. Yes, sir, a road conductor.

Q. Does the Central of Georgia promote any employees other than white employees to the position of conductor?

A. No, sir, they never have to my knowledge. I know they have not since I went to work for the railroad.

Q. In the ordinary course of events, from where does the Central obtain men to be promoted to conductor?

A. From the qualified and eligible flagmen.

Q. So it is that the flagmen serve as a pool from which you draw your conductor material?

A. That is correct.

Q. What is the function of a baggage man? Are the baggage men called baggage masters?

A. Yes, sir, that is the proper definition.

Q. What is the function of a baggage master?

A. Well originally he handled a lot of baggage, but that is not the case now because there is not much baggage moving. People mostly carry it with them in the coaches, since they have modern handbags and things.

Q. That is a passenger operation, is it not?

A. His work principally consists of handling United States mail. The baggage master handles United States mail which the railroad handles, and he has to make a report of it, and keep it, keep up with it, put it off where it is going, so that the railroad can get the revenue from the Government for such mail as is handled.

Q. Are they bonded?

A. How is that?

Q. Are they bonded employees, the baggage masters.

A. No, sir, they don't require any bond. Now, when I say handling mail I mean overflow mail, more than will go in the regular mail car, they put it back in the baggage car. They just pile it in there.

Q. Could you give the Court an estimate of what percentage of our road employees are in passenger service, and what percentage are in freight service,

roughly? In other words we have very few passenger operations left, that is true, isn't it?

A. That is right, they are mighty few. I wouldn't say, I would just have to guess at it. I could check it pretty quick, but we have a very small percentage of men in passenger service to what it used to be. Most of the passenger trains, that is local trains, are gone.

Q. Would it be a fair statement to say that the Central is primarily and predominantly a freight road now?

A. That is correct.

Q. Mr. Collins, in 1919 what position would a colored applicant apply for if he wanted to get a job with the Central in yard service?

A. Switchman.

Q. That would be the position for which he would apply, switchman?

A. Yes, sir.

Q. Suppose he would prefer, rather than being in yard service, to be in road service, what position would he apply for?

A. Brakeman.

Q. In yard service under the contract of employment which has been in effect since 1919, to what positions are colored applicants restricted in yard service?

A. Switchmen.

Q. To what positions are colored applicants restricted by the contract in road service?

A. Let me qualify that just a moment. They are not restricted to switch tenders positions, either. A switchman or a swtch tender could be a colored man, so far as the contract is concerned. However, we have very few switch tenders now. Like the pas-

senger men, they have been more or less eliminated.

Q. They are a thing of the past?

A. Yes, sir.

Q. Under the contract, to what positions are colored applicants restricted if they wish to serve in road service?

A. Brakeman.

Q. Under the contract, if a white applicant would like to be in yard service, what positions could he serve in?

A. Switchman or switch tender.

Q. Could he be promoted eventually to a yard foreman?

A. Yes, sir, that's the way they come up.

Q. The Central doesn't promote any colored switchmen to yard foremen?

A. No, sir.

Q. If a white applicant applied for a position in road service, what positions would he accrue seniority on if he were hired?

A. He would accrue seniority as a baggage master, flagman and brakeman.

Q. Mr. Collins, does the Central have any promotion provisions in the step from flagman to baggage master or brakeman to flagman?

A. No, sir, no, sir, there is no line of promotion marked out from a flagman to a baggage master. They are all termed, if a man is a flagman he is a baggage master.

Mr. Cooper:

I am sorry, I didn't hear that.

The Witness:

I say there is no promotion from flagman to a baggage master, the two terms are synonymous so far as their rights are concerned.

Q. So far as the contract provides?

A. Yes, sir. The rates of pay are different.

Q. But whether or not a man is colored or white, you don't promote him to serve until you think he is qualified to serve, is that correct?

A. Oh no, no, he is required to learn the road, that is go over the road, and ride on the trains with employees to get their O. K., so to speak, and they have to read and write.

Q. Until he learns the road, you mean?

A. You might say training process or period. At least that is the policy and is always done, unless, like back during the war we will say, we got so short until we might have deviated from that in some instances, but if it is possible that is what is always done. That is required.

Q. How long has that contract provision been a condition of employment governing these types of work that we have just referred to?

A. Well don't know of a rule that—as I understand that is in question here, the rule was made effective on August 27, 1919. Now back beyond that the same, practically the same thing happened that we just went over.

Q. So far as the present rule that we are considering is concerned, that has been a rule continuously since August, of 1919?

A. That is correct.

Q. Has there been any change in that rule since August, of 1919?

A. No, the same rule.

Q. So it is that any employee that was employed since August, of 1919 in road or yard service has been controlled by that rule?

A. That is correct.

Q. Has the Central altered the contractual rights of any employee as regards that rule since August, of 1919?

Mr. Cooper:

Just a moment. I think I object to the form of that question as to whether they have varied any rights. That is really one of the issues between us here.

The Court:

I sustain the objection.

Q. You have testified that there has been no change in the contract provision since 1919?

A. No, sir.

Q. To your knowledge has that provision been applied to all parties or employees of the Central, both white and colored, since August, 1919?

A. Yes, sir.

Q. Mr. Collins, I believe you stated that a colored employee seeking employment on the Central in yard service would apply as a switchman, and in road service would apply as a brakeman. Did you procure some application forms for colored employees to be used at this hearing?

A. Yes, sir.

Q. How did you select the names of the applicants to select these application forms, were they selected at random or were they selected from the Plaintiffs in this case?

A. They were selected from the Plaintiffs in this case as I understand. That is all of them that we knew about. There is some discrepancy in there, some was not in the service, and all. Mr. Sease telephoned there in the car and he just asked them to send them to us from the Columbus office.

Mr. Cooper:
Who is that?

Mr. Miller:
Mr. Sease. He is present here.

A. I was present at the time. He telephoned and told them what we wanted, and to send them up here to us, and they did.

Mr. Cooper:
I don't want to be technical particularly about it, if these are the Company records. I don't believe however that a proper identification of them has been made merely by stating that somebody called somebody and asked them to send them over.

Mr. Miller:
I will ask him to identify these papers.

Mr. Cooper:
If he knows of his own knowledge.

The Court:
All right.

Mr. Miller:
I am still in the process of building up the identification on them. I just wanted to make it clear that there was no selection, we didn't try to select any particular group of employees to prove any particular point. That is the point I was developing there.

Q. Mr. Collins, I hand you here a paper that carries at the top a printed wording "Application for

Employment." I will ask you to take a look at that particular paper and tell the Court whether or not you can state what it is?

A. That is what we call an application form, 1958, which covers the application of people seeking employment. And it covers a number of different classes, all that is in question here, and a good many that are not, Your Honor. You can see if it was a signal man it could be the same thing as the fireman. It catches different kind of employment.

The Court:

Are all these the same?

Mr. Miller:

Yes, Your Honor. They show, if the man applied for yard service he applied as a switchman, we have a switchman here, and if it is road service, it is for a brakeman. We have quite a few of them here representing employees from the Columbus Division. That is the one we called. We called Columbus. As a matter of fact, I think all of the Plaintiffs that have testified have testified that they applied either as switchmen or brakemen. This evidence is designed to show that is true, and that these particular Plaintiffs understood that they were applying for brakeman or switchman when they applied for employment.

The Court:

Is there anything in here to the effect that they will always remain brakemen?

The Witness:

No, sir.

The Court:
If a white man applied for a brakeman's job he would fill out exactly the same application?

The Witness:
That is true.

Mr. Cooper:
We will admit those, Your Honor.

A white man signed the same form of application, didn't they, Mr. Collins?

The Witness:
Yes, sir, they use the same form.

Mr. Cooper:
If he is applying for job as switchman he signs the same form as a Negro applicant; if he is going on the road he signs the same form?

The Witness:
That is correct.

Mr. Cooper:
I don't think they have actually identified them entirely, but we make no point on that.

The Court:
These appear to be original documents.

Mr. Cooper:
If they are his records, that is all right, we don't object to them.

Mr. Miller:

I assume there will be no necessity for him to identify each individual one.

The Court:

Can we have a stipulation that you have presented the application for all of the Plaintiffs in these cases, and offered one of them as typical for the whole group?

Mr. Miller:

That's right. I would like to offer one for the brakeman's classification and one for the switchman's classification.

Mr. Cooper:

We have no objection.

The Court:

All right. It shows the date of the application and the answer?

Mr. Miller:

Yes, sir. It shows the seniority date. I would like permission to withdraw these and substitute photostatic copies.

Mr. Cooper:

We have no objection to that. Would you mind giving us a copy of the photostat?

Mr. Miller:

We will be delighted to.

Q. Mr. Collins, what applicant is that particular application from that you have identified?

A. This is the application of Major Threat, colored.

Q. For the position of what?

A. Brakeman.

Mr. Miller:

I would like to have that, if I may, identified.

(Defendant Railroad's Exhibit No. 1 was marked for identification.)

Mr. Miller:

I would like to offer that in evidence at this time.

The Court:

It will be admitted.

Q. Mr. Collins, I hand you a document which purports to be an application for employment with the Central of Georgia, and ask you to state if you can recognize and identify that document?

A. Yes, sir. This is the application for a position as switchman for Willie Robinson, colored.

Q. Does that show that he applied for the position of switchman?

A. Yes, sir.

Mr. Miller:

I would like to have this identified for the record.

(Defendant Railroad's Exhibit No. 2 was marked for identification.)

Mr. Miller:

I would like to offer that into evidence at this time, Your Honor.

The Court:

It will be admitted.

Mr. Miller:

May it please the Court, I would like also permission to withdraw that Exhibit No. 2 and substitute a photostatic copy.

The Court:

You will have that right.

Q. Mr. Collins, you are familiar with Article 26(a) of schedule of wages, known as rules and regulations, which is the employment contract between the Central of Georgia Railway and the various crafts represented by the Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Mr. Collins, I hand you a book which purports to be that contract just referred to and ask you if you can identify it?

A. Yes, sir. This is the contract between the Brotherhood of Railroad Trainmen and the Central of Georgia Railway Company.

Q. What is the date of that contract?

A. Effective August 1, 1952.

Q. Is that the contract which governs the employment of the Plaintiffs in this action?

A. Well, yes, sir. There is nothing in here that governs the employment, but it fixes the status of the employment.

Q. Is that the one—

A. I mean the rights of the employees, when he comes in.

Q. Is that the only labor contract between the Central and the Plaintiff in this case?

A. Covering this subject?

Q. Yes, sir.

A. Yes, sir.

Mr. Miller:

Your Honor, this particular book is not the original contract.

The Court:

I understand that.

Mr. Miller:

I take it that the Plaintiffs would not make any point that this is not the original.

Mr. Cooper:

No, sir. If Mr. Collins can identify it as a correct copy of it, that is satisfactory to us. We wouldn't introduce it, we had no one that could identify it.

The Witness:

It is.

Q. Is that a verbatim copy of the original?

A. Yes, sir.

Mr. Cooper:

Actually we have no objection, but I would like to point out that the language of course is admitted in the answers.

Mr. Miller:
That is true.

The Court:
Is that the only part of the contract that is in controversy here, is the part set out in the bill of complaint, for practical purposes?

Mr. Cooper:
For practical purposes, yes, sir, that and the practices under it, and any other understandings that they may have similar to it.

Mr. Miller:
There is one additional provision, or rather two, in this contract, contractual limitations that we have plead, which I presume it would be in order for us to prove.

The Court:
Yes. In other words, if you can identify this, and that can go in with the understanding that only such parts of the contract as are material will be part of the permanent record, in other words.

Mr. Miller:
I think so, Your Honor. That would be agreeable to us. I would like to have this exhibit identified.

(Defendant Railroad's Exhibit No. 3 was marked for identification.)

Q. Mr. Collins, is Article 26(a) the Article dealing with who shall serve as brakemen and who shall serve as switchman and the other categories of em-

ployment that we will discuss in this matter? I will withdraw that question.

Mr. Collins, I hand you the Railroad's Exhibit No. 3 and ask you to refer to Article 26 (a) and read it if you will. It is rather brief.

A. Article 26(a) provides:

"When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggage man, brakeman, or switchman, except that Negroes are not to be used as conductors, flagmen, baggage men or yard conductors."

Q. Now, Mr. Collins, how long has that provision that you have just read been a part of the contract governing brakemen?

A. Since August 27, 1919.

The Court:

What does the word vacancy include, "When a vacancy occurs"?

The Witness:

What we mean by that is that, say, you had two or three runs or you had one run and there were three men on it. One of them drops out, gets hurt or for any cause there is a vacancy to be filled. That position will be advertised on the bulletin board, and every employee will make his bid, if he wants it. You have a right to change from one run to the

other, in a case of that kind, or in a case where you cut off a man and a man was put out of employment, then he would have a right to displace, without any bulletin, just right now, any man that was his junior in his class.

Q. So that Article 26(a), which you have just read, in effect has a provision governing the right of the classes of employees listed in the contract. Was that in effect at the time that each of the Plaintiffs in this action was employed by the Central of Georgia?

A. Yes, sir.

Q. In so far as you know was it not understood that each of the Plaintiffs in this action at the time that they sought employment, that they were restricted by the contract of employment which you have just read?

Mr. Cooper:

We would like to object to the form of that question, calling for an undisclosed mental operation.

The Court:

I sustain that.

Q. I believe you have already testified, but just to be sure we have covered this point, was this Article 26(a) being applied by the Company when each of these Plaintiffs was employed?

A. Yes, sir.

Q. Mr. Collins, in negotiating contracts of employment affecting switchmen, brakemen, flagmen and baggage men, is there any Federal Statute which controls who you are to deal with?

Mr. Cooper:

We object to that.

The Court:

I sustain the objection.

Q. Mr. Collins, in negotiating contracts of employment who do you deal with if it affects brakemen or switchmen, flagmen or baggage masters?

A. The proper representatives of the Brotherhood of Railroad Trainmen.

Q. Is the Brotherhood of Railroad Trainmen the sole and exclusive bargaining representative of the Plaintiffs in this action?

A. Yes, sir.

Q. Were they the bargaining representatives of the Plaintiffs at the time the Plaintiffs were employed?

A. Yes, sir.

Q. Do you deal, in determining provisions of the contract of employment, or in determining conditions of employment, with any individual employee in the craft of brakeman, flagman, baggage master or switchman?

A. No, not generally speaking. Of course we have a more or less liberal, wide open policy. We will talk to any employee about anything, but so far as changing any of the rules or anything like that, we don't do that except by the people who is a party to it.

Q. You say "We". In other words, your door, speaking personally, is always open to any employee who wants to talk to you about his job?

A. Yes, sir.

Q. Will you negotiate a change in a labor contract with an individual employee?

A. No, sir.

Q. Who will you negotiate any change in the employment conditions with?

A. With the designated bargaining agent, whoever it may be; in this case it is the Brotherhood of Railroad Trainmen. Of course that is subject to change, as you know, under certain circumstances or procedure.

Q. Mr. Collins, do you recall the testimony yesterday of one of the Plaintiffs, Odell Jones, which according to my recollection, he at least intimated that around 1927 there was some change in the classification of brakeman, from brakeman to a category known as trainman?

A. Yes, sir, I recall that.

Q. My memory is not complete on it, but assuming that that testimony was made, to your knowledge has there been any change in the designation or in the rights of colored brakemen since 1919 on the Central of Georgia?

Mr. Cooper:

We object to that, if the Court please. That calls for a conclusion on one of the material issues in the case.

The Court:

Was there any change? I sustain the objection.

Mr. Rives:

If Odell Jones was permitted to say there was a change, wouldn't this witness be permitted to say there was not a change?

The Court:

Change in rights, he is talking about.

Mr. Miller:

I will rephrase it, Your Honor.

Q. Mr. Collins, since 1919 has the Central of Georgia made any change in the classification as brakeman?

A. No, sir.

Q. Since 1919 has the Central of Georgia made any change in the classification known as flagman or baggage man?

A. No, sir.

Q. I believe you previously testified that there has been no change in the contract of employment as affects those positions since 1919?

A. No, sir.

Q. If Odell Jones yesterday testified that there was a change in the classification of brakeman to trainman, would you say that that testimony was accurate, or would you say it was inaccurate?

A. It is incorrect.

Q. Now, Mr. Collins, with reference to the procedure of one employee rolling or displacing another employee, has the Central ever knowingly permitted a brakeman with less seniority to displace another brakeman with more seniority?

Mr. Cooper:

I would like to object to the form of that question. I don't know what he means by "knowingly."

The Court:

Overruled.

A. Oh, I know of no case where that ever happened. Now we must know, everybody does, that sometimes we overlook people, and maybe call the wrong man. And when we do that we many times have to pay the man that should have been called.

That could have happened with a colored man. If that has happened we would have treated him just like we would anyone else, if it was brought to our attention. But I know of no case where there was ever any difference made.

Q. Would that be the result of a mistake?

A. Yes, sir.

Q. If it were done?

A. That would only be the result of a mistake where the crew dispatchers in calling for men have overlooked somebody. But that is just on minor occasions.

Q. So the Central has never knowingly or intentionally permitted a junior man in seniority in the same class to roll a senior man?

A. No.

Q. As a brakeman. I restricted that to brakeman.

A. No, sir.

Q. Let me ask that same question with respect to the position of switchman? Has the Central ever intentionally or knowingly permitted, irrespective of color, a junior switchman to displace a senior switchman?

A. No, sir.

Q. Now, Mr. Collins, let's assume you have a senior brakeman who would like to have the job of a junior brakeman. Under what circumstances can the senior brakeman roll the junior brakeman from the junior brakeman's job?

A. Well, assuming that both of them have a job and are in service, working, the senior man can't bother the junior man, unless he is displaced himself.

Q. In other words, as long as the senior man has a regular assignment, he cannot look around and select a job that he wants and roll a junior man?

A. No, sir, he just can't arbitrarily change. If he is affected, say a man is cut off or somebody displaces him, then he has a right to displace any man that is his junior.

Q. In other words, a senior man cannot displace a junior man unless that senior man loses his job either by the job being cut off or somebody rolling him?

A. That is correct in every case except one. Now we do allow a man having a regular position, he can give up that position, have that advertised for assignment for everybody to bid on, and go on the extra board.

Q. He can voluntarily give up a job?

A. He can voluntarily give up a job and go only on the extra board, but he cannot displace any regular man.

Q. While on the general subject of rolling, let's talk about this category of lister switchman that came up yesterday. Let'a ssume that you have a senior white employee who is in the category of what is referred to as lister switchman, or braking and flagging man. As long as he has got that job, could he look out among the switchmen's positions and displace a colored switchman who has a regular assignment, who is his junior?

A. No, sir.

Q. In other words, a senior booker and flagger who, let's assume he is a white booker and flagger, cannot displace a colored junior switchman until such time as his job is cut off, or until the time the senior white booker and flagger's job is cut off or he has been displaced by somebody rolling him?

A. That is correct, he cannot just arbitrarily step over there and get it.

Q. Of course that is true, irrespective of color, that applies to all employees?

A. Oh, yes, everybody.

The Court:

Is that true with respect to the flagmen, in other words, can a white flagman go and roll a junior brakeman?

The Witness:

No, sir, not unless he is cut off or rolled.

The Court:

Unless he is cut off or rolled himself?

The Witness:

Yes, sir, that is correct. Now then if you will permit me, I want to say this. Under these rules, they more or less cover everything. Now there are certain rules that would require a man to change runs, but in that event, if for instance a layover was changed, where the man laid over or something for so many hours, that would create a preference in that job. That would give that man a right to change runs and maybe get a run that would suit him better. But it is only where it is covered in those cases that there is any difference from what I just said.

I just happened to think of that, and I wanted to mention that because that is provided for. For instance, change of so many hours in the layover period, and that is done to take care of situations that take place, like Birmingham or Atlanta, it might be a great inconvenience to a man to have to change from the time he got in, to get home and things like that. That is the only way that the run would be

thrown open, but that would throw it open for assignment to the senior man, that he might change, in other words, just a case of seniority only.

Q. That is actually no exception to your answer?

A. No, it is no exception, but I wanted to mention it because that is provided for. That is the only change.

Q. You have testified, Mr. Collins, that a white employee in road service has joint seniority as flagman, baggage man and brakeman?

A. Yes, sir.

Q. Let's assume that you have a flagman who has more seniority as brakeman than a colored brakeman, and let's say—this is more or less the question that the Judge asked you. Can that white flagman who has also more seniority as brakeman than the colored man on the same run, can he decide "I prefer to be a brakeman rather than to be a flagman", can he roll that brakeman when he has not been displaced, or when the white flagman's job has not been discontinued?

A. No, sir, he can only do that when the run is open.

Q. These fundamental rules of rolling that you have outlined apply to switchmen, flagmen, baggage masters and brakeman all alike?

A. That is correct.

Q. That applies irrespective of color?

A. Yes, sir.

The Court:

Suppose a baggage man has seniority over a colored brakeman. Can he roll him?

The Witness:

He couldn't roll him unless he had been displaced himself.

The Court:

In other words, the flagman and the baggage man can roll the brakeman?

The Witness:

That's correct, when they are displaced or when the run is open, they can bid for it.

Q. Now, Mr. Collins, all of these rules of rolling that you have described have been in effect since 1919 on the Central of Georgia, have they?

A. Yes, sir, they have been in effect since then, and beyond that.

Q. That is just a fundamental rule of railroad employment?

A. Yes, sir.

Q. That actually applies to all classes of employment, doesn't it?

A. Yes, sir.

Q. Now, Mr. Collins, in your knowledge as Director of Personnel of the Central of Georgia has any of the Plaintiffs in this case, or has any colored brakeman ever made a demand upon the Company for the right to serve as flagman or baggage master?

A. No, sir, not to my knowledge. I never have had that.

Q. Is it a responsibility of your job to deal with demands of employees or changes in contract terms?

A. Yes, sir. Now—

Q. Did you want to answer that?

A. I just wanted to say, if I understood how your question was, you mean just an individual would write in and say he wanted to change the contract?

Q. In other words, if an individual wanted to do that, would you be the man that he should take that up with, should contact?

A. Yes, I would be the fellow he would have to contact.

Q. You testified you would not deal with him, but you would be the man that he would contact?

A. That's right.

Q. Has a colored switchman ever requested to your knowledge, to you or to anyone else—

Mr. Cooper:

I object to anyone else.

The Court:

I sustain the objection as to anyone else, unless it was in his presence.

Mr. Miller:

Yes.

Q. Has a colored switchman to your knowledge requested of you or any other official of the Company, of course within your presence, that he be permitted to serve as a yard foreman for example?

A. No, sir.

Q. Mr. Collins, if an employee is in road service and decides he would want to work in yard service, does he lose all his seniority with the road when he decides to make that change and does make it?

A. Yes. The only way he could do that would be to request a transfer from the road to the yard service.

Q. Then what happens to his seniority in road service?

A. If the management agreed to it, why then he would have to lose all of his seniority from whence he came and commence as a new man.

Q. In other words, he would have the same standing as a man who had never worked for the Central before?

A. That's right, the same as a new man.

Q. Would you explain to the Court your seniority districts, as they apply for example to switchmen first?

A. Whenever what is commonly known, in railroad circles, as point in seniority in yard service, in other words, in the yards, with some slight exceptions where we have these little yards, just a one engine proposition, we have what is known as point seniority. For instance, take Columbus. Men in that yard hold seniority only in the Columbus yard, that's all.

Q. Suppose he wanted to work in the Macon yard?

A. He couldn't go there at all, and the man in Macon is just like him.

Q. He would start off as a new man if he moved to another seniority district?

A. That's right, the same way in Savannah and everywhere else except, well, I recall Rome, Georgia, where we just had one engine, and over at Athens, and they all passed out, the yard men that used to be there, and we just, rather than go outside and employ somebody else, we just let the road crews work those jobs.

Q. But that is an exception to the rule?

A. That is an exception, yes, sir.

Q. How does your seniority district work as regards road service employees?

A. A man's seniority from the time he is employed and establishes it is attached to the Division where he is employed.

Q. That is by Divisions?

A. Yes, sir.

Q. How many different Divisions does the Central have in its System?

A. Three.

Q. Three different Divisions?

A. Yes, sir.

Q. If a man in yard service wanted to transfer to road service he would also lose his seniority rights?

A. In the yard.

Q. In the yard?

A. Yes, sir.

Q. And he would start off as a new man on the road?

A. That is correct.

Q. Yesterday there was some testimony concerning the operations of the extra board. Let's talk for example about the extra board in Columbus on switchmen. Are you familiar with what would be the average number on the first in, first out extra board in Columbus?

A. No, sir, I wouldn't say I am familiar with it. I have nothing to do with the handling of that, but I know that it would be—it wouldn't be any such a practice as—

Mr. Cooper:

I object to that. He says he is not familiar with it. I don't see how he could have knowledge if he is not familiar with it.

The Court:
I sustain the objection.

Q. Do you know of your own knowledge what would be the custom and practice that would be carried out in the first in, first out extra board in the Columbus yard for switchman?

Mr. Cooper:
The same objection.

The Court:
Overruled.

Q. The question is do you know of your own knowledge what would be the custom and practice, and the Judge overruled the objection, so you can answer the question if you know.

A. Oh, I beg your pardon. I thought it was reversed, that is the reason I didn't answer. I would say about six or eight.

Q. How does a man qualify to get on the first in, first out extra board?

A. Well, if he worked anywhere he can work on the extra board. He usually works on it just before he gets a regular job. Some men prefer it to a regular job.

Q. Is there any other extra board for switchmen in the Columbus yard other than the so-called first in, first out, or the first board?

A. Well, yes and no. It is usually referred to as the emergency board. You see you will have your first in, first out board, that is the ones that work, that turns pretty fast.

Q. Are those the ones that would be first called in the event a regular man is off?

A. That's right.

Q. All right.

A. That is what is known as the first board. Then you always have, when things are dull, a goodly number of men beyond that that is on the board. They haven't got enough seniority to be on the regular board that turns, they are called "Emergency men." In case the board is exhausted, you will go down and get them.

Q. Let's assume you have 40 switchmen in the Columbus yard that don't have regular jobs. How would you select those that went in on the first extra board?

A. Pick the first six or eight senior men, whatever they are in there.

Q. By seniority, irrespective of color?

A. That's right.

Q. When you have an opening for employment in the Columbus yard as switchman and you don't have a regular man to take it, how do you select your man from your first board to take those assignments?

A. You mean from the emergency board?

Q. No, sir, first in, first out board. You called it the first extra board I think.

A. You would have to have a vacancy on there though.

Q. Let's assume you have a vacancy for employment.

A. Then you would go to what I would term the emergency board, the fellows below that, and take the senior man and put him up there.

Q. That is a good answer, and I did want that to be developed, but here is what I am driving at. Suppose you have a regular assignment available in the yard at Columbus for a switchman and you don't have a

regular man to take the assignment. And let's assume that is open to bid, that is a regular assignment?

A. Yes, sir, that's right.

Q. Suppose you have some holiday work or extra work which doesn't constitute a regular assignment in the yards in Columbus. How do the men work on the first in, first out board, are they selected by seniority or selected first in, first out?

A. Well, they have been selected to go on there by their seniority; after they get on there, then it works first in, first out, they are all the same, so far as the rights of the men on there are concerned, the first in, first out, I work today, and then while I am gettting my rest, a fellow comes right up behind me and he works on it. It just turns right on.

Q. That is done irrespective of color?

A. Yes, sir.

Q. I believe you answered this, but assume you need some more men to go on the first in, first out extra board. You would select them from the so-called emergency board?

A. That is the man that is cut off, not working; we would take the senior man.

Q. By seniority?

A. Yes, sir, by seniority.

Q. Is that irrespective of color?

A. Yes, sir, yes, sir, sure.

Q. Mr. Collins, yesterday there was some testimony concerning work trains that operate I presume in and out of the Columbus yards. The testimony had reference to the use of two flagmen. Will you explain to the Court how that developed, and why you don't have one flagman and one brakeman on that run?

A. Well, under the operating rules of our railroad, and I think that is true, I think it is the standard

rule everywhere, a work train is required, whether standing or moving, to protect itself in both directions, to keep out of the way of all secheduled trains. Unless they have, by train order given by the dispatcher a right to be there, they have to protect both ways while doing their work. And they require flagging on both ends of the train. That became a dispute with this Brotherhood a good many years ago, and the Brotherhood of Railroad Trainmen contended that they should have two flagmen on there.

Q. What did the Central have on the work train at the time the Brotherhood of Railroad Trainmen said they ought to have two?

A. They had one flagman and sometimes a colored brakeman. And there were instances where they would run a work train out and they would maybe use the maintenance of way forces to flag on one end. It was quite a long drawn out dispute, and was submitted to the National Railroad Adjustment Board in '46, and the Board sustained the claim of trainmen and gave them two flagmen on the work trains when operated on the main line of the Central. And you might say it has been the rule since that time. The award was later incorporated into the schedule.

Q. So it is the Adjustment Board order that gives them that privilege, that causes them to put the two flagmen on?

A. Yes, sir.

Q. Did the Adjustment Board make a money award to any flagman who had not been put on?

A. Yes, sir, they paid a number of men that should have been used that were not used.

Q. When you say "They", you mean the Central paid?

A. The Central paid.

Mr. Black:

When did you say you put that into effect?

The Witness:

The National Railroad Adjustment Board.

Mr. Black:

Did you put it in the contract after they made the award, did you say?

The Witness:

Yes, sir, we put the provision in there that two white trainmen must be used when work trains are operated.

Q. Mr. Collins, yesterday there was some testimony concerning a switchman that is required by the switch foreman to do some paper work, to do some booking, which I believe you refer to as a lister switchman, is that correct?

A. That's what I always heard them called.

Q. So in my interrogation to you I will refer to him as a lister switchman, it being understood he is the man referred to yesterday as the booker and flagman?

A. Yes, sir.

Q. Does he do work that must be done by a switching crew?

A. Some member of the switching crew.

Mr. Cooper:

I would like to object to this line of questioning unless it is directed to matters in his personal knowledge, and as a result of his personal observations.

The Court:
Of course I will sustain it unless that is the case.

Mr. Cooper:
He hasn't been asked that, Your Honor.

Mr. Miller:
Would Your Honor like for me to preface these questions by asking if it is within his own personal knowledge?

Mr. Cooper:
I am not sure that as a witness he understands.

The Court:
You can ask him if he knows.

Q. Mr. Collins, do you know of your own personal knowledge and experience whether or not the work of such a switchman is work that must be done by some member of the switching crew?

A. Yes, I know that.

Q. Does the Central have any understanding or agreement with anyone, including the Brotherhood of Railroad Trainmen to exclude colored switchmen from performing the duties performed by a lister switchman?

A. None whatever.

Q. Will you state what your understanding is of the Central's position with relation to the employment of a colored switchman to perform the duties of a lister switchman or to fill the position referred to as lister switchman?

Mr. Cooper:

I would like to object to that question. He can state what they have done and are doing, but his understanding of their position I think is objectionable.

The Court:

I sustain the objection to the understanding.

Q. Mr. Collins, you are Director of Personnel on the Central, are you not?

A. Yes, sir.

Q. To your knowledge, Mr. Collins, what has been the practice of the Central in filling the position of lister switchman?

A. Well, the practice has been to advertise by bulletin the position as lister switchman.

Q. Under that practice, any applicant would do what to signify his desire to hold down the position?

A. He would place a bid in writing to the proper party to receive it.

Q. Who would be the proper party to receive it?

A. The yardmaster or terminal trainmaster, wherever the yard work was at.

Q. That bid, as you call it for the position would be in writing?

A. Yes, sir.

Q. Is that the procedure that is required for bidding on a job?

A. That's correct, the bid must be in writing and the bulletin is posted and run for a period of five days and states the date and time when the bulletin will expire, when it must be in, by that time. Whoever bids for it, his bid is in, and assignments are made from that.

Q. Do you know of your own personal knowledge, not hearsay, but of your own personal knowledge whether or not a qualified colored switchman has ever been refused the position of lister switchman if he bid on the job in accordance with the prescribed procedure?

A. No, sir, I do not.

Q. Let's see if I can ask you this question. As Director of Personnel, if it were brought to your attention that a qualified colored switchman had bid on the position in the proper manner for lister switchman and had been refused it, what would be your instructions to the people who applied these rules of the Company?

A. My instructions would be to give it to the qualified man, and if the colored man bid for it and he was qualified to do the work, he would have to have the position.

Q. So it is that within your knowledge as Director of Personnel the Central is willing to permit a colored switchman to serve as lister switchman, in the event the proper person considers that he is qualified to do the work of lister switchman?

A. Sure, yes, sir.

Q. I believe you testified the work must be done by some member of the crew?

A. That is correct, it has to be done.

The Court:

Would you mind stating just what the lister switchman does?

The Witness:

Your Honor, it is done mostly on what we call switcing engines that are working industrial plants,

for instance, we have say a car of beer being placed at the wholesale house, or something, and that is true of all of them. You have what is known, and we call it a placement sheet. The engine that places it there, it must be stated that it is placed, and in many cases the time it was pulled out from the industry, and the car number and the initial and the seal numbers, to see if the seals are all intact when it was placed. That form has been in use by the railroad for a good many years. It is necessary, so far as the seal record is concerned. to know that the seals are all intact when it was placed there, in case claims for damage, or shortages or anything like that occurs.

Then it plays a good part in your demurrage charges, what time you place it, what time it comes out. That's what it is. Now, with a lot of engines, they don't need them at all, but it is only at these outlying places mostly where they place the cars.

The Court:

That is in some respects not unlike the booking that you have been talking about, the booking and the flagging, he does some of the same duties?

The Witness:

That is the same thing, as I get it.

Mr. Miller:

Yes, sir. For a point of clarification, the lister switchman and the booker and the flagger are one and the same.

Mr. Rives:

As I understand it, some of the contracts call it the leadman, in other words, leadman or booker and flagger and switchman is all the same.

Mr. Cooper:
Also the same as the flagman.

The Court:
Do I understand the colored men could not take the booking and flagging job, is that correct?

Mr. Miller:
That is the contention of the Plaintiffs, yes, sir.

The Court:
You say he can take a lister switchman's job?

The Witness:
Yes, sir. There has never been a case brought to my attention.

Mr. Rives:
The positions are synonymous. It means the same thing, they just call it by different names.

Mr. Miller:
I want to be sure the record is clear. It is the Central's position that if a colored switchman is qualified he will be permitted to do the booking and flagging which they say they are not permitted to do, and which we refer to as lister switchman. I apologize for changing the terms.

Mr. Mitch:
What is the derivation of "lister"?

Mr. Miller:
Just making a list. So the two terms are synonymous, Your Honor.

The Court:

We are going to take a 15 minute recess at this time.

(A recess was had.)

Q. Mr. Collins, ordinarily where does the Central obtain the employees that are promoted to yard conductor or yard foreman?

A. Well, generally speaking, of course there are some exceptions, have been in days gone by, they get them right from the yard, or the Division where they are employed.

Q. From the white switchmen in the Division where they are employed?

A. In the yard where they are employed, and from the white flagmen on the road.

Q. That would be a conductor on the road?

A. Yes, sir.

Q. Does the Central, to your knowledge, have any understanding or an agreement that would exclude colored switchmen from serving as a booker and flagger, which we previously referred to as a lister switchman?

A. Not to my knowledge, no, sir.

Q. To your knowledge is the Central willing to promote any switchman, irrespective of color, to serve in the position of a booker or flagger, or what we have referred to as a lister, if he is qualified?

A. Yes, sir.

Q. As I understand it, the work of booking or listing is a foreman's work which is delegated to a member of the crew?

A. Yes, sir, it might well be compared to a road conductor, the reports that he has to make. It is different, but it is just a record that you have to have.

Q. Mr. Collins, you have in your hand Central of Georgia's Exhibit 3. I will ask you to refer to Article 26(j), and will you read Article 26(j) from that exhibit?

A. Article 26(j) provides:

"A statute of limitation of one year is hereby fixed to take up on appeal a case of seniority. If one year has elapsed without any written protest being filed in such cases, it cannot be taken up by the trainmen's committee or officials of the Company."

Q. Will you refer to Article 30(a) of Central of Georgia's Exhibit 3 and read the provisions of that Article?

A. "Article 30 Time Claims.

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances."

Q. Mr. Collins, to your knowledge have any of the Plaintiffs in this case complied with either of those Articles of the contract?

A. No, sir. Now, did you want the whole Article read?

Q. No, I don't believe so.

A. Just that part?

Q. Yes. My memory is not clear as to whether I formerly introduced the contract into evidence, and I would like to do it at this time.

The Court:
Yes.

Mr. Miller:
It was received in evidence?

The Court:
It will be received.

Q. Mr. Collins, on yesterday did you hear one of the Plaintiffs in the case, Odell Jones, testify that the Central had no white brakemen employed in 1925, and did you hear Major Threat in answer to a question testify to the direct opposite?

A. Yes, sir.

Q. To your knowledge which one is right, Odell Jones or Major Threat?

A. Major Threat.

Q. Did we have white brakemen in 1925?

A. Yes, sir.

Q. Did you hear Odell Jones on yesterday testify that the Central was not hiring white brakemen in 1925?

A. Yes, sir.

Q. Now is that correct?

A. No, sir. The Central has hired white brakemen, when we needed men, along with colored brakemen, since 1919.

Q. Ever since 1919, if a white man was employed for road service did he serve as a brakeman as well as a flagman or baggage master?

A. Yes, sir.

Q. Mr. Collins, in 1920 could a white brakeman with 10 years seniority roll a colored brakeman with 15 years seniority?

A. No, sir.

Q. Could he do so today?

A. No, sir.

Q. In 1920 could a colored brakeman with 15 years seniority, if displaced, roll a white brakeman with 10 years seniority?

A. Yes, sir.

Q. Can he do so today?

A. Yes, sir.

Q. In 1920, Mr. Collins, could a colored brakeman with 15 years seniority if displaced from his position roll a white flagman with 10 years seniority?

A. No, sir.

Q. Can he do so today?

A. No, sir.

Mr. Miller:

The witness is with you.

Mr. Cooper:

Shall we cross examine Judge?

The Court:

I think you had better take Mr. Rives down here, if he has any questions.

Cross Examination.

By Mr. Rives:

Q. Mr. Collins, is there a provision in this contract between the Central of Georgia Railway Company and the Brotherhood of Railroad Trainmen designated as Article 26(d)?

A. Yes, sir.

Q. Will you please read that provision of the contract?

A. Article 26(d) provides:

"The rights of trainmen to run will be in accordance with ability and seniority. The senior qualified trainmen will be given preference. Regular assigned passenger trainmen will not be taken off their runs to run extra or special passenger trains, except Officers' Specials or an organization requesting particular trainmen. The rights of yard men to positions and promotions will be in accordance with ability and seniority. The senior qualified yard man will be given preference."

Q. All right. Now is there a provision in the contract that I just mentioned that is designated as Article 26(e)?

A. Yes, sir.

Q. Will you read that provision of the contract?

A. Article 26(e) provides:

"In promotions, the rights of the oldest trainmen will be considered but if in the judgment of the officials he is not qualified he will be notified in writing, it being understood that merits and ability will count for more than term of service. All yard men will be in line of promotion except to position of General Yardmaster. Promotions will be governed by merit and ability and time of entering yard service. The

line of promotion will be from switchman to foreman, foreman to yardmaster."

Mr. Rives:

Now, Your Honor, we want to offer in evidence the provisions of that Article 26, (d) and (e).

The Court:

All right, they will be admitted.

(Brotherhood's Exhibit No. 1 was marked for identification.)

Q. Now, Mr. Collins, back in 1919 the railroads were under Government control, were they not?

A. Yes, sir.

Q. In employing switchmen and brakemen and flagmen and baggage men, does the Company have any educational requirements for white applicants, or any educational requirements for colored applicants?

A. Yes, sir.

Q. What are those educational requirements?

A. The white applicants for training in yard service are required to have at least a high school education. The colored applicants are only required, as the agreement provides here, that they must know how to read and write, and to comply with the regulations as to the use of standard watches, so as to know time, and so forth.

Q. Some mention has been made here about road conductors. The Brotherhood of Railroad Trainmen don't represent the road conductors on the Central of Georgia Railway, do they?

A. No, sir.

Q. The conductors are represented by the Brotherhood of Railway Conductors and Brakemen?

A. The Order of Railway Conductors and Brakemen.

Q. Yes, sir.

A. Formerly the Order of Railway Conductors. The name was just recently changed.

Q. And I believe you testified that conductors are usually drawn from a pool of flagmen?

A. Yes, sir.

Q. And the conductor is a boss of a train crew?

A. That is correct.

Q. He is in charge of the train and the train crew?

A. Yes, sir.

Q. That is true of passenger trains and it is true of freight trains also?

A. Yes, sir.

Q. Now when a white man applies for the position of flagman with the Central of Georgia Railway Company I believe you testified that he was required to get experience in the work of a brakeman and as a baggage man?

A. Well not—I wouldn't say not necessarily as a baggage man. He gets his experience, of course, they most all do serve in the dual capacity but his main, basic experience is as a flagman or brakeman on freight trains.

Q. And the white applicant for employment is required to do what you call "cubbing" as a brakeman and as a flagman before he is accepted as a regular employee of the Company, is he not?

A. Yes, sir, he is required to go out and learn the road, and get what we call O. K'd before he starts, by the crews that he rides with, as to whether he is safe or not.

Q. A colored applicant for the position of brakeman is not required to become experienced and qualified as a flagman or as a baggage man?

A. No, sir.

Q. When he was employed as a brakeman?

A. No, sir, we don't require as much of him. We require him to go over the road and learn what he can, but we don't require him to ride in the baggage car or learn anything about that.

Q. You don't require him to do the work ordinarily performed by a railroad flagman?

A. No, sir.

Q. Now isn't it true that, I believe that you testified that a railroad flagman stays close to the conductor and assists the conductor in his work and helps him to make out various reports, is that right?

A. That is correct. They both ride in the same caboose and are close to one another.

Q. Now then the flagman, in making out reports for the conductor or at the request of the conductor or at the direction of the conductor is required to make out, or makes out what is known as a wheel report, doesn't he?

A. Yes, sir.

Q. Now, Mr. Collins, do you know what information must be developed and inserted in a wheel report on a freight train?

A. Yes, sir.

Q. What are those elements?

A. First you have to show the initial and the number of each car handled.

Q. All right.

A. Whether it is loaded or empty.

Q. All right.

A. And where it is picked up at, where it is moved from in your train.

Q. All right.

A. That is designated by station numbers.

Q. In other words, give us an example.

A. If we started from Birmingham here it would be B-448 I believe. And if it moved from here and went to Columbus it would be shown as 191—no, 192.

Q. All right.

A. And the number of miles handled would be shown there.

Q. All right.

A. And the light weight of the car, how much the car weighed, and the—I believe that's all.

Q. Where does the flagman or the conductor get the weight of the car?

A. He gets it off of the car.

Q. There is a stencil on the car that shows that?

A. It is stenciled, yes, sir, there is a stencil on the car.

Q. Does he have to show on this wheel report the kind of car, whether it is a boxcar or gondola or what?

A. Yes, sir, "B" for boxcar, and "C" for coal.

Q. Does the wheel report have to show the contents of the car?

A. Yes, sir.

Q. Does it have to show—

A. No, I don't think they require that. That goes in does.

Q. Does it have to show the tonnage?

A. It shows—yes, that shows the contents.

Q. It shows the contents?

A. That's right.

Q. Does it show the tonnage of the lading?

A. No, I don't think they require that. That goes in the total tonnage of the whole train.

Q. You have to have the tonnage of the lading in order to know the tonnage of the train though, don't you?

A. That is usually figured on a different basis. It don't take every car, for instance, if you have 150 cars leaving here, the tonnage is figured on the whole train.

Q. You don't break it down and show the tonnage of each lading?

A. You don't break it down to each car.

Q. You show the total tonnage of the entire lading on the train?

A. That's right.

Q. So you do have to show the tonnage of the lading, but it is not the tonnage of the lading on each individual car, but the tonnage of the lading of the entire train?

A. Yes, sir.

Q. Because the conductor is required to keep his train within a certain tonnage limit, is he not?

A. Yes, sir. Now, out of large terminals, like leaving here, the tonnage is figured at the yard when he leaves. He has that part of it done. As he picks up the loads on his train, why then he changes it to correspond to what he does on the line of road.

Q. You said the wheel report would show the final destination by station number?

A. Yes, sir.

Q. Does that wheel report contain any icing or ventilating instructions, if there are any refrigerated cars?

A. I don't think so.

Mr. Cooper:

I object to the leading questions. Mr. Rives evidently knows more about railroading than the witness. He can ask him what he does, but he is telling him.

The Court:

Overruled.

Mr. Rives:

I wouldn't try to tell Mr. Collins anything, Your Honor. I will assure you that.

The Court:

He said he didn't know, I think, with repsect to that.

Mr. Rives:

All right.

Q. Mr. Collins, where does the flagman, in making up this wheel report that you have just described, get the information in order to put in the wheel report? I believe you said the weight of the car is taken from the stencil on the car. Of course the number and initial and kind of car, that is apparent by looking at the car, isn't it?

A. Yes, sir.

Q. From what data does he get the contents information?

A. That comes from the waybill.

Q. The waybill?

A. Yes, sir.

Q. That is a bill of lading, it is all the same thing, isn't it?

A. No, sir, it is not the bill of lading.

Q. What is that?

A. The bill of lading is what is issued to the shipper when he deposits the shipment or the car to be shipped.

Q. All right.

A. That is his receipt for it from the railroad. The waybill is what we call the manibill on freight. It is made out by the agent, where it originates, where it is going, who to, who from, all about it, the freight.

Q. That is what you call a waybill?

A. Well they are both the same. The old waybill is just one copy.

Q. I see.

A. The L&N used to use that, but we use the manibill, which has two or three copies, or maybe six, where it doesn't have to be recopied.

Q. Is there such a thing as the manifest?

A. Well we call that—that is what we call the consist.

Q. Consist?

A. Yes, sir.

Q. What is that?

A. The consist of the train is, for instance, like you leave here going to Columbus, then you get the consist in Columbus, before you got there, what you have got. They would have how many cars you had, say going to the Macon line, how many going to Albany, how many going to Andalusia, and all about it. That is what we call the consist. Now that is given to the train by the yard forces.

Q. That is handed to the conductor?

A. That is usually telegraphed ahead so that they will have it.

Q. I see.

A. Now the conductor makes the switch list.

Q. A train list or switch list?

A. Switch list we call it of every car in his train.

Q. That is in addition to the wheel report?

A. Yes, sir.

Q. All of that paper work that you are talking about is either done by the conductor or frequently and usually it is by the flagman, at least he does that work for the conductor in many instances?

A. Well almost without exception it is done by the flagman.

Q. All right. And the flagman then has to get all of this information either from observation of the train or from these manibills, and make up these reports?

A. They have what they call a train book, it is a small book, about as wide as that, and about that long (indicating). It is called a train book. Every conductor has one of them. And he lists his train before he leaves, checks it, car number, seal record, light weight, and then when he gets to the yard office and he gets his bills, and he puts the contents and the destination down in that, and he has it in his book. He can make his report right from the book.

Q. Of course the conductor, he having charge of the whole train and the whole train crew, he sometimes stays up on the engine, sometimes back in the caboose, is that right, the conductor?

A. Oh, yes, he has a right to go and the job to go anywhere. He might do it, he might ride on the engine for two or three stations, then drop back to the caboose, but generally he rides in the caboose.

Q. He is responsible for seeing that the train is operated in accordance with the operating rules of the Company?

A. Yes, sir.

Q. I believe you explained the work required of the switchman that does this booking and flagging a while ago. I believe it is made clear that this work of booking and flagging is sometimes referred to as lister switchman, and the Negroes sometimes refer to it as leadman. You heard them refer to it as leadman yesterday, didn't you?

A. Yes, sir, I have heard that.

Q. That is all the same job, I mean the same work, and called by different names, is that right?

A. Yes. I never heard the booking part of it until yesterday. I have always heard it designated as lister switchman.

Q. But the duties and the work are all the same?

A. All the same.

Q. Now is it or not true that each of these Plaintiffs applied for and accepted employment by the Central of Georgia Railway Company as either switchmen or brakemen, and worked under this contract governing the schedule of wages, rules and regulations of switchman and brakeman and were compensated by the Central of Georgia Railway Company for performing the work under that contract, and accepted any other benefits accruing to a switchman or a brakeman under that contract?

A. Yes, sir, that is correct.

Q. And I believe you stated that to your knowledge none of these named Plaintiffs had ever made a bid, according to the provisions of the contract, for any job other than the job of either switchman or brakeman?

A. Not to my knowledge. I wouldn't know what they did otherwise, but I never had a complaint of it. It never got to me.

Q. I believe the Court asked you if a baggage man could roll a brakeman, and I believe you said that he could, but he could only roll that brakeman if he had greater seniority than the brakeman that he was rolling?

A. That's right, and if he was—

Q. And he would have to be displaced just like a brakeman rolling a brakeman as you explained in your testimony?

A. That is correct.

Q. He is in the same situation as if he was a brakeman and rolling a brakeman?

A. That's right.

Q. As you explained on direct examination?

A. That is correct, yes, sir.

Q. Now you testified about advertising certain job assignments by placing a bulletin on the bulletin board?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And I believe that you said that the bulletin would contain a provision to the effect that bids for the job must be filed by a certain date?

A. Yes, sir.

Q. And that if the bid was not filed by that date, the employee forfeited his right to bid on that job?

A. No, the bulletin don't always state that. That is generally understood by everybody. They just say make out your bid, tell him where to send it, send it to the trainmaster so and so, or whoever it is, with copy to the Local Chairman. That is a double check. The bulletin expires at say 12:01 a. m. on a certain date.

Q. That is applied to white employees as well as colored employees?

A. Yes, sir. It is put up for five days, they have five days to decide.

Q. Now Mr. Collins as Director of Personnel do you have jurisdiction over the locomotive firemen on the Central of Georgia Railway Company?

A. Well I handle all of the contract matters with them, I have jurisdiction over all of that part of it.

Q. Does the Central of Georgia Railway Company require a white fireman to qualify for the position of locomotive engineer by examination?

Mr. Cooper:

I would like to object to the relevancy, involving another craft.

The Court:

I believe that is irrelevant.

Mr. Cooper:

Not involved here.

The Court:

How is it relevant?

Mr. Rives:

Your Honor, we offer to show that the Central of Georgia Railway Company requires white firemen to stand an examination for locomotive engineer not less than 4 years after service as a fireman, and if the white fireman fails to pass the examination for engineer he loses his job.

Whereas, the colored fireman is not required to stand such an examination for engineer, and he may continue on to work for the Central of Georgia Railway Company as a fireman after the white fireman had to give up his job because he couldn't pass an examination for engineer; and that a group of white firemen have instituted a suit over in Georgia I believe against the Central of Georgia claiming that the Central of Georgia has discriminated against the white fireman in favor of the colored fireman. And we think that that evidence is pertinent to the charge that is made here against the Defendant of a conspiracy against these Plaintiffs because they are Negroes.

The Court:

I believe that is too remote. I sustain the objection.

Mr. Rives:

We reserve an exception.

Q. Now yesterday there was something said by one witness, Willie Lawton, about the Dothan switch local. I don't know how important that testimony is, but I think we ought to clarify it. Will you explain to us that situation at Dothan regarding the job as Dothan switch local?

A. I'll try. We have at that point what we term a switch local service. We have had it, we have them at a good many places, we have one operating right out of Birmingham here, concentrated around all over the railroad. It is within the railroad circles as common as most any other service. Now under what we term switch local service this is a main line crew, and he is assigned by bulletin to work within certain

limits. His limits are always defined and brought within the 100 miles for pay purposes. All the train service employees are paid on a basis of 100 miles or less, 8 hours or less, to constitute a basic day's pay.

So we assign him between the points we figure that we might need him, and set him up that way. Now, he might work a month or six months or a year and never leave Dothan, but if we wanted to run him say up to Blakely or over to Columbus for any purpose, we have a right to do that because we are paying him every day for that assignment, that mileage, and it wouldn't cost anything extra.

Q. Originally this Dothan switch local would go over to Blakely and back to Dothan, wouldn't it?

A. He would do that occasionally, but his principal work was on the other end.

Q. From Dothan to Slocomb?

A. That's right, we had a line down there about 44 miles long, and for quite a long while we had two little coaches, they handled passengers on there, and there was nothing much on the railroad, and this switch local would make the trip down to Hartford and back, and then go on and work in the yard or on the road, anything that was necessary, and it did all the work in Dothan.

First the passenger service sent off, and finally the service, it got so lean until they sold it to a group of people down at Hartford and Slocomb, Alabama. They just sold it to them, and we don't go that way any more.

Q. This road crew that has a brakeman like Willie Lawton says he is a brakeman, it was originally designed to go to Slocomb and to Blakely, but because of the sale of that little short section of line from Dothan to Slocomb, and other conditions with refer-

ence to the run over to Blakely, now the work performed by this railroad crew is confined to Dothan?

A. That is right.

Q. They just don't have any work to do at this time?

A. That's true.

Q. But if they had any occasion to go to Blakely, you have a right to send him out there because he is a road man, he is a brakeman?

A. Oh yes, if we had a train break down and wanted to send him up there, we would send him right on up there, we could do that. The principal part of the trips was on that end that was sold, but the job remained right on.

Mr. Rives:

That's all, Your Honor.

The Court:

All right.

By Mr. Cooper:

Q. Mr. Collins, I believe you said that you are the Chief Personnel Officer of the railroad, is that correct?

A. Well, my title is Director of Personnel. I am the only one there is.

Q. That makes you Chief then. Where is your office, please, sir?

A. Savannah, Georgia.

Q. Is that where your principal functions are performed, do you maintain that office in Savannah?

A. Yes, sir.

Q. You are not present from day to day in these various yards of course, when jobs are rolled or when

assignments are made by the dispatchers or yardmasters, are you?

A. No, sir, but I get a copy of all the bulletins, they mail them to me.

Q. Your information as to what takes place then in the main is merely copies of the bulletins?

A. Copies of the bulletins and any question that comes up about anything that people ask about.

Q. You testified a while ago that you had never heard of the jobs described as booking and flagging jobs in the yard. Isn't it a fact, Mr. Collins, that in recent years at least they have been putting up bulletins from time to time, calling the job a booking and flagging job?

A. Yes, sir, that might be, but I don't recall ever seeing one.

Q. It might be though?

A. That's right, lister switchman, trainman.

Q. I believe you said that you at one time were the Chairman for this very Brotherhood on this railroad, is that correct?

A. That is correct.

Q. Then you left and went into the service of the Company?

A. That is correct.

Q. Did you keep your seniority as a trainman when you went with the Company?

A. Yes, sir.

Q. That was by arrangement with the Brotherhood, you were allowed to keep your seniority as a trainman when you went into the employ of the Company as a supervisor or whatever your title was?

A. The contract provides for that.

Q. I see.

A. They fixed that many years ago.

Q. Do you still maintain your seniority as a brakeman in this Brotherhood under this contract?

A. Yes, sir, I have seniority as a conductor, I think I will be about the third man on the roster on the Division maybe since I came. I have seniority as a flagman, baggage master and brakeman since July 5, 1912.

Q. In all of the years that you have been an officer and member in this Brotherhood, were there ever any colored officers of any of the Locals or of the higher bodies of the Brotherhood?

A. No, sir.

Q. As a matter of fact, they were never permitted to be members, were they, Mr. Collins?

A. Not while I was there.

Q. And they are not now so far as you know, are they?

A. I did see where one was taken in up East somewhere.

Q. Yes, sir, but not on this railroad?

A. No, sir, not on this railroad.

Q. First, let's look at the practice under your contract with the Brotherhood, which as I understand your testimony is the only agency you can deal with in setting up seniority and other conditions of employment, isn't that correct? You have to deal with this Brotherhood?

A. Well not necessarily with this Brotherhood. We do so only as long as they have the contract. Now if someone else would come in and make an issue of it, then there would be a vote taken as provided under the Railway Labor Act.

Q. I understand.

A. And whoever the Board certified to us as the designated representative, which we would have nothing to do with, we would have to accept that.

Q. I understand that, but at the present time the certified bargaining agency, and the only agency you can deal with for the class of trainman here is this Brotherhood, isn't that so?

A. That is correct.

Q. Now as a matter of fact the class or craft of trainman is dealt with by that certification as a single class, isn't that so?

A. Well now pardon me, let me get this just like it is. There has never been any question that I know of on this railroad. When the Railway Labor Act was amended in 1937, naturally people who had these contracts before it was set up, as to how they might be changed in the matter of representation, that was just carried on, and there has never been any issue so far as I know, it has just been that way. We never got any certification from the Board. We didn't need it.

Q. You just deal with this Brotherhood, for the class of trainmen, and contract with them, and that has been your practice?

A. That is right, that is correct as I understand it, unless somebody would make an issue and want to take the contract away from them.

Q. Actually the contract itself in Article 32 states that the word "trainman" referred to in these rules applies to all employees represented by the Brotherhood of Railroad Trainmen, that is so, isn't it?

A. In this book, yes, sir.

Q. Yes, sir. All right, sir, now you have identified for the record copies of forms which your railroad uses when men apply for employment, and I believe

you told us that when a colored brakeman, or a man applies for colored brakeman or as a colored trainman, he signs this application which is Railroad's Exhibit 1, and the white applicant for the same job signs the same application, isn't that so?

A. That is true.

Q. Yes, sir. The only difference is you mark by his name "Colored" if the applicant is a colored man?

A. That's right.

Q. And the same thing is true when applications are made, when men apply for the job of switchman, a white applicant and a colored applicant both sign the same application?

A. They use the same form, writing in the position that it covered.

Q. Let's take first a white and colored applicant, or applicants who apply on the same day for a job as brakeman. They both establish seniority as brakemen on the same date, don't they?

A. Yes, sir.

Q. If a vacancy occurs on the job of flagman, the white brakeman can move over to that job, can't he, you train him for it, don't you, if he bids for it?

A. Will you state that question again, please, sir?

Q. Say a vacancy occurs on the job of flagman, the white brakeman if his seniority entitles him to it is entitled to bid for that job and train on it, isn't he?

A. Yes, sir.

Q. The colored man is not eligible to bid for that job and train on it, is he?

A. No, sir.

Q. That is under your contract and your practices with this Brotherhood?

A. That is true.

Q. You have described how a trainman can then, if a vacancy occurs as baggage man or conductor, he can promote on up to those jobs?

A. That's right.

Q. The seniority of the colored man is limited to the job of brakeman?

A. That's right.

Q. In a reduction of force, or in a layoff, a white man who has worked as a conductor or a baggage man or flagman can roll back and take a job, if he is displaced from his own job, of brakeman, if his seniority as a brakeman entitles him to it, can't he?

A. That is correct, under this rule.

Q. He can leave a white man working as flagman or baggage man who has less seniority than the colored brakeman that he displaces, isn't that so?

A. That's true.

Q. That happens, doesn't it, Mr. Collins?

A. Yes, I assume it does.

Q. That means that the colored brakeman who has more seniority than the white junior flagman is out of a job, and the white flagman continues to work, isn't that so?

A. Well, it all reverts right back to the youngest man on the seniority roster.

Q. I understand. Now take a situation on the extra board, and I am talking of the men,—what do we call them? Line-haul man, not the yard men.

Mr. Miller:
Road men.

Mr. Cooper:
Road men.

Q. Take the situation on the extra board for road men. You have a colored brakeman and a white brakeman, both hired on the same day, they have the same seniority as brakemen. If that white man has promoted in the past to the job of flagman, and a flagging job comes up, he can bid that job and take it from the extra board, can't he, if he is the man first out?

A. Yes. They couldn't both have the same seniority. One would have to have different seniority from the other.

Q. All right, take this situation, take the colored brakeman as having more seniority than the white brakeman. The white man can bid on that job which is a flagman's job, and the colored man who had more seniority as brakeman can't, isn't that true?

A. That's true.

Q. That happens, doesn't it?

A. Yes, sir.

Q. That means that the oldest colored man whose seniority is limited to that of brakeman gets less work than the junior white man who can exercise seniority on the flagging job, isn't that correct?

A. Yes, sir, and the same thing would go here, and here, whereas the white man has the baggage car and the flagman's position and the brakeman's job, he has dual rights to all of them, and the brakeman has a right to the brakeman's job, he can only exercise those rights that he has as a brakeman.

Q. He is not permitted to bid on or to train on these other jobs of flagman, baggage man and conductor?

A. That's right.

Q. Now you say that a provision of that nature, or perhaps this exact language has been in the agree-

ment between the Brotherhood and the railroad for a long time?

A. Yes, sir.

Q. Has the Brotherhood ever to your knowledge demanded of the railroad that these restrictions in seniority for colored men be taken out of the contract?

A. No, not that I know of.

Q. They have insisted on it, haven't they?

A. Well, so far as I know there has been no question about it since 1919.

Q. In 1952 you signed the last contract, which is the one we are talking about now?

A. That's right.

Q. And I believe it is in evidence. Did you have negotiations with the Brotherhood before you signed that contract?

A. Yes, sir.

Q. In those negotiations did anybody, either the Brotherhood or the railroad, say that restrictions of this kind have been considered by the Courts and had been ruled illegal, was there any discussion of that sort?

Mr. Sadler:

We object to that.

The Court:

I sustain the objection.

Mr. Cooper:

We offer to show that these people had knowledge of the actions previously taken by the Courts in construing it.

The Court:

I think all of us are charged with knowledge of the law.

Mr. Cooper:

I agree with that.

Q. Would you state what the discussions in substance were in those negotiations, or the meetings before the present contract was signed?

A. This contract?

Q. Yes, sir.

A. I'll tell you how this contract come into being. After the settlement that was made in Washington, which you know about, or are familiar with, it went on for quite a long time, it carried a clause, the railroads were in it all over the country, and it carried what was known as the moratorium clause, that neither side could open up or change any rules unless it was mutually agreeable to both sides.

Q. Is that in the present contract?

A. No, and the present contract here is just a codification, so to speak, putting all the rules and supplemental agreements together. We were not changing the rules, and the identical rule we are talking about, we just put it just like it was.

Q. Well, did you have any discussion of that rule?

A. Yes, sir, I mentioned it, but there was nothing we could do about it, because we were under the moratorium, the moratorium had not expired. Of course there were rules that both sides would like to have, but neither side could move, but we could put all of our eggs, so to speak, in one basket, was what we did then.

Q. That is all that was said as you recall about this problem of seniority in Article 26, that you couldn't do anything about it?

A. Well yes. I never considered that we could change anything about it, and we wasn't requested to change anything.

Q. Well can you tell us in substance what you said about Article 26 in this meeting?

Mr. Sadler:

This is leading up to the execution of the contract of 1952?

Mr. Cooper:

1952.

Mr. Sadler:

All right.

A. I don't think there was anything said about it except I, as I recall, there was a lot of things said in the negotiations of it, like that. As I recall I made mention of it, and they said well we'll put it just like it is, which we had to do, we couldn't change anything, because we was in the moratorium. And there were a good many things like that. I don't recall that there was any issue made about it.

Q. No issue made of it so far as you can recall?

A. None of it, none of it, because what we were doing was just collecting what we had and getting it under one cover, where it was more convenient. You see, the schedule hadn't been revised since 1927, and we had more out of the book than we had in it, and we wanted to get it all together, so that we could find it better.

Q. Now to summarize your testimony about the yard men, there are two types of seniority under this contract, one for the colored brakemen, and one for the white brakemen, as you describe?

A. I don't know whether I would say there are two types or not. The only thing is that the white brakeman has seniority as a brakeman which is equal with the colored man, and in addition to that, just as has always been the case on this railroad, he is used and has a right to the job as flagman or baggage master. He has the two places to work in addition to the brakeman's job.

Q. Some years ago wasn't it the fact that most of the braking jobs were held by colored men?

A. Yes, in the years gone by that was correct.

Q. Moving over to the yard jobs, isn't it true that some several years ago most of the switching jobs were held by colored men and the switching crew in the yard would be a white yard foreman or conductor and two colored switchmen, isn't that so?

A. That is true, that was back in the days when they paid the colored men less money than they did the white men.

Q. That was when they paid the colored men—

A. That was a long time ago, many, many years ago.

Q. When the wage rate got up for the switchmen, then the white men began taking an interest in the switching job, isn't that so?

A. I think on the Central they had always been interested in them.

Q. But most of the jos had been filled by colored men?

A. They had. To be right frank about it, here is what happened. As long as the colored man was paid less money, there wasn't much attention paid to it.

A. Yes, sir.

A. But when the rates were made the same, and when the white brakeman was forced to go out to protect the job, he said "Well, if I've got to do that, I ought to have a right there too."

Q. Since most all of the jobs as switchmen had been worked by colored men in the past, the oldest men in seniority were colored men as switchmen in the yard, isn't that so, in the main?

A. It depends on which yard you are talking about. That is true in some cases, and it is quite the reverse in others.

Q. Assuming the situation as you have described it, that during the time the wages were less for the colored men than for the white men, practically all of the jobs were worked by the colored men, isn't that so?

A. No, it varied just like I say. It come about just like everything else come about down in this part of our great country.

Q. All right.

A. Take in Atlanta for instance, take in Chattanooga, Tennessee. I don't recall that there was ever a colored switchman in Chattanooga. And there were only about three or four in Atlanta, that is there away back, 1880 or '90.

Q. Take the situation in the Columbus yard.

A. In Columbus they had a good many. Now down in Savannah they had a few but not as many as they had in Columbus.

Q. When you began to hire in white men, young men as switchmen, they of course had less seniority

as switchmen than the colored men who were already working in the yard, isn't that so?

A. Yes, they were bound to have, they had just come into service.

Q. Yes, sir.

A. They didn't have any at all.

Q. Isn't it a fact that at the time that these young white fellows started coming into the yard, where there were older colored men with seniority, that you began to call, or the railroad began to call some of these jobs booking and flagging jobs?

A. No, sir. I never heard of a booking and flagging job until right recently.

Q. Well lister job then, if you call it that?

A. No, I never heard of a lister job. The first one I ever heard of was at Columbus, I don't know just how long ago, but it was quite recently, compared to what we are talking about.

Q. Looking at the situation quite recently, in a yard where they now call some of the switching booking and flagging, a young white man who has been permitted to work on that job can keep his job, although there are colored men who are put on the extra board or laid out of service with more seniority as switchmen, isn't that so?

A. He couldn't keep it if it was ever brought to my attention and the colored man was qualified to do that book work or that writing, why the colored man would certainly have to take the job.

Q. Don't you know it is the practice in these yards to treat these colored men as being disqualified to bid on one of these jobs of lister switchman?

A. No, sir, I don't know that.

Q. If that is so, do you repudiate that here now?

A. No, I don't repudiate—

Mr. Rives:
We object to arguing with the witness.

The Court:
I sustain the objection.

Q. All I want to know is if it is, so far as the railroad is concerned, if that has been going on is it contrary to the policy of the railroad?
A. Yes.

Mr. Sadler:
I think we stated in our answer our position on that, and this witness has too.

The Court:
All right, I sustain the objection.

Q. Do you know, Mr. Collins, it to be a fact that colored switchmen in these yards are called to fill the job of lister switchmen or booking and flagging when there are no white men available?
A. No, I never hard that until yesterday.
Q. You are not in these yards, as I asked you before?
A. I never heard that until yesterday, and nobody ever brought it to my attention.
Q. You are not in position to contradict that, I take it, since you don't know about it, is that true?
A. No.
Q. In your opinion as a railroad man, and based on the experience you have had, if a colored man can fill a job of booking as you have described it, or lister man in the yard, if he is called in an emergency or due to the absence of a white man in your opinion

would he be qualified to do that work if he does it satisfactorily on that occasion?

A. Absolutely, sure. I wouldn't question that a moment.

Q. Now I think you heard the testimony of one of the Plaintiffs, going back a moment to the road men, of his being on the extra board and a job came open on which a senior white man who had seniority as both flagman and brakeman could take his pick of either one. Do you recall that testimony?

A. Yes, sir, I recall that.

Q. And he chose to take the braking job, so that the colored man didn't get that job, and they brought a man from another Division to work as flagman. That can happen under the rules and practices in effect on this road, can't it?

A. Well that did happen. That is the first time I ever heard of it, and I am sorry that they didn't bring it up. Now I would say that that is wrong, and we would have straightened it out if it had ever been brought to my attention. If we didn't have anybody on the extra board and there was no way to fill the run, why I would think that we would have been justified in forcing that man to go as flagman, and not bother a man from another Division.

Q. In other words, you would have forced the senior man to go as flagman and permitted the junior—the colored man to work as brakeman?

A. Yes, sir. Now we do just that with the road conductors. We allow him to lay back and get a good run as conductor, provided they have plenty of men to relieve him, but if we don't have anybody to relieve him without upsetting things, then we say "John, you are going to go out", and I think that should have been done in this case. I never heard of it until yes-

terday. If this man had brought it up, and I would have known of that, I couldn't have undone it, but I would have certainly have straightened that out.

Q. Are you familiar with the bulletins that are published from time to time in the yard saying that a job is open for one switchman, and for one switchman to do booking and flagging, do you see bulletins to that effect?

A. I haven't seen one that said anything about booking and flagging. They may have been issued.

Q. Flagging is a term which applies to the duties of a flagman, doesn't it, in railroad talk?

A. Yes.

Q. Isn't that so?

A. That's right.

Q. So that if there is flagging work to be done, it is governed by the language of the contract that says flagmen shall be white men, isn't that so?

A. That's right.

Q. All right.

A. Provided it is—now, let me ask you this, Colonel, are you talking about this yard engine where a man goes out incidentally and might flag a train to get out of the way, or are you talking about a regular proposition?

Q. I am talking about a bulletin put up by the railroad in a yard saying that one man will be a switchman and the other man will be a booking and flagging man. That is what I understand is the practice.

Mr. Miller:

The witness seems to be a little confused, and I would like to have that question repeated.

Mr. Cooper:
All right.

The Court:
All right, reframe your question.

Q. For instance, Mr. Collins, I show you a document and ask you if that is what is called a bulletin on your railroad?

A. Yes, I would say that is a bulletin, but it is an unusual bulletin. It is not the one I have been talking about.

Q. What is unusual about it?

A. Well this is unusual because the purpose of this was, when they changed from a five day week to the six day week, and all of the jobs had to be opened, and that was brought about by a lawsuit that was filed against us by the colored switchmen.

Mr. Cooper:
I move to exclude that.

The Court:
I sustain the objection.

Mr. Cooper:
I haven't asked about any lawsuit.

Q. Have you located in that yard various jobs that are described as switchmen No. 1, capable of doing booking and flagging?

A. No, I hadn't seen that.

Q. You had never seen that?

A. No.

The Court:
What is that document?

The Witness:
This document, Your Honor, is brought about by this. We had on our line, and every where else, the five day work week, and it was left optional whether the employee wanted to put in five days or stay on the sixth or seventh days. They notified us that there was a grievance, and they wanted to go into it. And we put them on the five day week, there were a good many of both colored and white that didn't like it, and they sued us in Court finally, the colored men did, about it, and there was a lot of those others I think that supported the suit, and it was finally worked out and settled in the Court suit by an agreement that they would go back to the six day week. And this of course opened all the jobs on the railroad to go back to the six day week, which happened one time in a life time, and I hope never will any more.

Q. Isn't it a fact every one of these jobs described as booking and flagging was denied to a colored man without regard to whether he had seniority?

A. I can't answer that. I presume it might have been, but I do know this, nobody ever brought it to my attention, none of the men or anybody else.

Q. Do you get copies of all bulletins, Mr. Collins, but this bulletin which you have described as rebulletining all of the jobs was not brought to your attention?

A. I got a copy of it also, I am sure I got a copy of it.

Q. But you don't recall the fact that a good number of these jobs had been described as booking and flagging?

A. No, sir. When it came in I doubt if I ever read it, because it was put out all over the railroad, going back to the six day week, and it was settled satisfactorily with the colored people who were in the suit, and with the Trainmen's Committee. They were both together on it, and we didn't anticipate any trouble about it.

Q. I don't know that you covered this Mr. Collins, you said I think in answer to a question that the ORC, or the present Brotherhood, which is the successor of that organization, I think you said they had a new name, represents the conductors.

A. Well, the contract we have with them was made with the order of Railway Conductors, which has been their name for almost a hundred years, but at their last Convention they changed the name to the Order of Railway Conductors and Brakemen, but they have given us no official handling of that.

Q. The only question I have is, isn't it a fact that these brakemen that we are talking about, men promote to conductors under the contract which we have in evidence here today, this governs their right to promote to conductors?

A. That is true.

Q. The 1952 contract that we are talking about?

A. Yes, sir.

Q. It also covers their right to keep their seniority as baggage men, flagmen and brakemen when they come back from the job of conductor?

A. Yes, sir, that is universally followed with all crafts.

Q. There is not any mention in the basic contract which is in evidence here, the August first '52 contract, providing for booking and flagging jobs in the yard, is there?

A. No, sir. I think I stated this morning that we had no agreement, never had any handling at all. That is just a question of in the different yards where the fellow did it to help the foreman out so he could keep the engine moving, rather than standing still while he did that.

Q. As you now recall though in 1952 all of the jobs were rebulletined, and that through them being described as jobs for booking and flagging, under this document I showed you –

Mr. Sadler:

I don't understand that.

The Witness:

I don't understand anything about it except when you showed it to me it immediately come to me what it is, that was brought about by the change from the five day back to the six day week. It is not the ordinary bulletin that is put out for assignment which would be just one job or two, and all numbered. All of the jobs were thrown open necessarily to give everybody on there a preference of where he wanted to go.

Q. Has the Brotherhood which is the contracting Union here ever brought to your attention any objection or complaint that colored switchmen were being denied the right to bid on the work of lister jobs or booking and flagging jobs in the yard?

A. No, sir, they have not.

Q. Now most of the young white men who are working on the so-called booking and flagging jobs are members of the Brotherhood, isn't that so?

Mr. Miller:

I object to the way that question is phrased. I don't believe it is established that all of these booking and flagging positions are occupied by young white men. That is a conclusion of the attorney here.

Mr. Cooper:

It is not. These men have testified that not a single colored man has ever been permitted to bid on or take permanently the job called booking and flagging.

Mr. Miller:

It has not been established at all.

The Court:

That expression was used, but I will sustain the objection. You can reframe your question.

Q. Is there any colored switchman presently permanently assigned to one of these jobs described as lister man or booking and flagging?

A. I don't know, I wouldn't know. Not that I know of.

Q. Not that you know of?

A. No.

Q. Don't you know, or isn't it a fact that the men who are permanently assigned on those jobs are white men who are members of the Brotherhood, isn't that so?

A. No, I don't know that. I have heard more about it right here than I have ever heard before. I couldn't tell you, honestly, I couldn't tell you how many there are.

Q. Do you know anything about the program of training for booking and flagging in the yards? I take

it you don't, when you say you never heard of it until yesterday. Is there any separate program for training white men to do booking and flagging that you know of?

A. No, sir.

Q. Is there any examination that you know of?

A. No, sir.

Q. Any examination that you know of?

A. No, sir, not on either side, colored or white. The only question would be if the man was qualified or competent to do the work. That is all the question there should be.

Q. But the contract provides, doesn't it, and I take it that it is the practice that the switchmen have the same examination, or isn't that so?

A. No, sir, there is nothing in this contract about it.

Q. I thought I saw somewhere a provision that says all men entering service, this is 26, on page 53, at the end, all men entering the service on and after September 1, 1919 to fill the positions of brakemen, flagmen, baggage men and switchmen will be subjected to and required to pass uniform examinations, that is the question I was asking, you have the same examination for all switchmen?

A. Oh, that is the train rules?

Q. Yes, sir.

A. Yes, sir.

Q. And the same examination?

A. I didn't understad that. We have the same examination as to knowing the signals, and things like that.

Q. I understand.

A. Yes, sir. I beg your pardon, if Your Honor will permit I would like to say I was a little mixed up on the educational qualifications which we covered some time ago in the direct question which you asked.

Mr. Cooper:
I would like to have the Reporter mark as Plaintiffs' Exhibit 1 I believe it is this rebulletin document that Mr. Collins has identified, and offer that if the Court please.

(Plaintiffs' Exhibit No. 1 was marked for identification.)

Mr. Rives:
May we see it please?

Mr. Cooper:
Oh yes. I thought you saw it.

Mr. Rives:
I saw it at a distance. Can we just reserve the admission of it? Are you going to ask him about it further?

Mr. Cooper:
I don't think so.

Mr. Rives:
I don't want to hold it up.

The Court:
All right, you can state your objection if you have any later on.

Mr. Rives:
All right.

Mr. Cooper:
Judge, I believe that's all we have.

The Court:
Do you have any further examination of this witness?

Mr. Rives:
I would like to ask him a question.

By Mr. Rives:
Q. Mr. Collins, is it your understanding that this job that is referred to as a switchman capable of doing booking and flagging is a yard job, yard service job as a switchman?
A. Yes.
Q. That is your understanding of it?
A. Yes, sir.
Q. It doesn't involve the duties of a road flagman?
A. Oh, no, no.
Q. When Mr. Cooper asked you if this work of booking and flagging didn't include the work of a flagman, that is not true, is it?
A. Well, no.
Q. That flagging is like the darky, the fellow that went out there and flagged the Seminole, and let it know there was a freight train up ahead, that is the kind of flagging?
A. Yes, sir, I think I tried to get it out as to whether he was talking about the incidental flagging.
Q. This booking and flagging in other words, that is the work of a switchman in yard service?
A. Yes, sir.
Q. Whereas the work of a flagman is the work of a road man out on the road, and the word flagging as used in booking and flagging is an entirely different thing from the work of a flagman on the road, isn't it?

A. Yes, that is true.
Q. All right.
A. It is separate and distinct.

Mr. Rives:
That's all.

The Witness:
I would be glad to explain that if I am permitted. One case that I know of, we have had instances where maybe we will have to keep a switchman on the crossing, or to look out for passenger trains. We put on an extra man just for that duty.

The Court:
All right gentlemen we will recess until 1:30.

(Whereupon, at 12:00 noon a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session. 1:30 P.M.

The Court:
I believe we had finished with the witness Mr. Collins, hadn't we?

Mr. Cooper:
I don't know whether they had finished or not. I had one question.

The Court:
Did you indicate you had finished?

Mr. Rives:
We have nothing more.

Mr. Cooper:
May I ask him one question? I didn't realize he was leaving the stand.

W. J. COLLINS, the witness on the stand at the time of the recess, on behalf of the Company, having been previously sworn, resumed the stand and testified further as follows:

Further Cross Examination.

By Mr. Cooper:
Q. Mr. Collins, isn't it a fact that on the railroad, due to the reduction in business, there are now a large number of qualified conductors who are holding preferred runs on your railroad, working today as flagmen or baggage men or switchmen, or whatever their seniority entitles to?
A. Yes, sir, that is true.

Mr. Cooper:
That's all. Thank you.

(Witness excused.)

Mr. Miller:
The Central has no other evidence to present at this time, sir.

The Court:
I believe the Plaintiff had two witnesses.

Mr. Cooper:
Yes, sir.

OTIS RAY one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. State your full name, please.

A. Otis Ray.

Q. Are you employed by the Central of Georgia, a Defendant in this case?

A. Yes, sir.

Q. Where do you work?

A. Columbus yards.

Q. What is your job?

A. Switchman.

Q. Are you working on a regular job or are you on the extra board?

A. I am on the extra board.

Q. At the present time are there any white switchmen who are working in the yard that have less seniority than you?

A. Yes, sir.

Q. Can you name them or do you know them by name?

A. I do.

Q. What are their names?

A. Mr. Algy Murray, and Mr. Durham.

Mr. Cooper:

Will you mark this as Plaintiffs' Exhibit 2 for identification, please, sir?

(Plaintiffs' Exhibit No. 2 was marked for identification.)

Q. There are some jobs at the yard where you work, aren't there, that have been bulletined as jobs involving booking and flagging?

A. Yes, sir.

Q. Are any colored men in the yard permitted to take those jobs as permanent jobs?

A. No, sir.

Q. Do the colored men work those jobs in emergencies when white men are not available?

A. They do.

Q. Have you ever worked some of those jobs that are called booking and flagging?

A. I have.

Q. Were you called out to do that when there was not a white man available?

A. Yes, sir, I sure have.

Q. Would you look at this document that has been identified as Plaintiffs' Exhibit 2 and tell me if that is a document that is called a bulletin that has been published or put in effect at the yard where you work?

A. That's right, it is.

Q. I don't want to take time to go through all of them, but some of these jobs that are referred to in there are described as requiring a man for booking and flagging?

A. Yes, sir.

Q. Have you ever worked on any of those jobs that are described as booking and flagging?

Mr. Rives:

It says switchmen capable of doing booking and flagging.

The Witness:

That's right. Job No. 9, Job No. 9, I worked that job, which would require a man capable of booking and flagging. We was the only two colored on this job.

Q. Did you all get the work done all right?

A. We had no complaints.

Q. I don't believe you were here this morning when Mr. Collins testified and described what a booker and flagger does in the yard, but if I recall correctly he said in substance that he has to keep a list of the initials.

Mr. Rives:

We object to Mr. Cooper leading the witness.

The Court:

I sustain the objection.

Q. Do you know, or have you ever had to keep a list of cars in the yard where you work so as to put them in the right industry?

A. Yes, sir, I have.

Q. Are you familiar with the industries there that the yard served?

A. Yes, sir, I am.

Q. Mr. R. C. McArdle is trainmaster at the yard there, is he?

A. Yes, sir.

Q. Some of these jobs in this document which is Plaintiffs' Exhibit 2 for identification are referred to as a relief switchman, who must be capable of booking and flagging. Have you ever worked any of those jobs?

A. I have worked them on relief, as relief switchman.
Q. As relief switchman?
A. But not bid on one.
Q. You haven't been given one?
A. No, sir.
Q. You just worked it?
A. I just worked it when the switchman was absent.
Q. When the white switchman was absent?
A. That's right.
Q. Did you get the work done all right?
A. I had no complaint.

Mr. Cooper:
We would like to offer this.

Mr. Rives:
I would like to glance at it a minute. Is this another one?

Mr. Cooper:
Yes, sir. That is all. I would like to offer this.

The Court:
Are those different or are they just copies?

Mr. Cooper:
No, sir, no, sir, this one is different. This one is dated June 24, 1953, the one I am offering now.

The Court:
Has it been marked?

Mr. Cooper:
Yes, sir. That is all we want to ask him about.

The Court:
All right.

Cross Examination.

By Mr. Miller:

Q. Otis, in regard to these booking and flagging jobs in the Columbus yard, did you ever bid on one of those jobs?

A. Yes, sir, I did.

Q. How did you make your bid for the job?

A. I made my bid just like I made them on all other jobs.

Q. That doesn't answer the question. How did you do it?

A. In writing.

Q. Did you put it on a form, or did you—

A. Just wrote it on an ordinary piece of paper.

Q. What did you write on the paper?

A. I would be glad if they would accept my bid, accept this as a bid on such and such a job.

Q. Who did you tender that to, who did you give it to?

A. One to the trainmaster and one to the Brotherhood Chairman.

Q. On how many occasions did you do that?

A. I did that only once.

Q. Only once?

A. Yes, sir.

Q. When was that?

A. I think if you will refer to it it was October 11.

Q. October 11, of last year?

A. No, sir, this year.

Q. Of this year?

A. Yes, sir.

Mr. Rives:
You mean just a week ago?

The Witness:
I think so.

Q. Was your bid declined?
A. Declined?
Q. I mean did you get the job?
A. No. sir, I didn't.
Q. Who did get the job?
A. Mr. Fred Durham and Mr. Algy Murray.
Q. Those were the two men you referred to before?
A. Yes, sir, they got the job.
Q. I believe you stated they had less seniority as switchmen than you have?
A. Yes, sir.
Q. Did you ask the Brotherhood to handle your case, or have you asked the Brotherhood to handle your case as a grievance?
A. No, sir, I didn't ask them. I asked the Local Chairman and he didn't give me no comment on it, and I didn't go any further with it.
Q. Have you submitted a claim or a grievance to Mr. Collins office, the Director of Personnel, or to the Superintendent of the Columbus Division?
A. No, sir. I talked with the trainmaster about it, and he explained to me that the Brotherhood of Locomotive Trainmen had an agreement in that, had a contract in their agreement there must be a white man capable of booking and flagging on every job in the Columbus yard. At this particular time there was four white mens on this job, the foreman made five. Each one of them would be there every night in the week. This particular job which they refused to give

me, that made five men, which would be employed, and they give the job to him.

Q. That was booking and flagging job, was it?

A. That's right, they give it to him, which would be five men on it.

Q. This Exhibit No. 2 that was shown to you, that was a bulletin, did that bulletin the job that you have reference to?

A. This one here?

Q. Yes, that you were just shown.

A. That was one of the same jobs in that bulletin, but this here bulletin came out here just about a week or so ago, which came down October 11.

Q. It was worded similar to the bulletin that you have identified?

A. Yes, sir, it was similar to the one he just showed me.

Q. It described the booking and flagging job as a switchman's job requiring a switchman capable of booking and flagging?

A. That's what it read.

Mr. Miller:

All right.

By Mr. Rives:

Q. The trainmaster that you referred to that you had this conversation with concerning your failure to get this job, do you have his name?

A. Yes, sir.

Q. What is his name?

A. Mr. R. C. McArdle I believe is his name, signed R. C. McArdle.

Q. What is his name?

A. Mr. R. C. McArdle.

Q. Trainmaster at Columbus?

A. That's right.

Q. Now, Otis, October 11, 1954 is the first time that you made out a written bid for one of these jobs of switchman capable of doing booking and flagging, isn't it?

A. Yes, sir.

Q. And you gave that written bid to the trainmaster of the Central of Georgia, Mr. McArdle?

A. Yes, sir, I did.

Q. You said you gave a copy of it to who connected with the Brotherhood of Railroad Trainmen?

A. Mr. Parker.

Q. Mr. Parker?

A. Mr. J. H. Parker.

Q. Mr. J. H. Parker?

A. Yes, sir.

Q. Was this at Columbus, Georgia?

A. Yes, sir, Columbus, Georgia.

Q. When did you give it to Mr. Parker?

A. The bulletin was supposed to come down at 11:59 on the 11th, which you have a bid box that you put your bid in. They gets the bid out of there and checks over them and see who bid on the job and who is supposed to chose the job. That's the way they get the bids out. You put them in the bid box.

Q. Did you personally hand this written bid to Mr. Parker or just put it in a box?

A. No, sir, put it in his mail box, and put Mr. McArdle's in his locker.

Q. You didn't personally hand it to Mr. Parker?

A. No, sir, I didn't hand it to him.

Q. You just put a piece of paper in a box?

A. No, sir, a letter.

Q. A letter?

A. That's right.

Q. In a box?

A. Yes, sir.

Q. And that is the last you saw of it?

A. Yes, sir, that's the last I saw of it.

Q. You say that you have in the past done the work of a switchman capable of doing booking and flagging?

A. Yes, sir, I have.

Q. Will you describe to us the work that you did on those jobs of booking and flagging?

A. Will I describe it to you?

Q. Yes.

A. Yes, sir, do my best I can. We have a line of tracks that is all numbered to which we have a straight lead that goes down, with some curves in it, with some different tracks coming off of there, I would say there is about 5½ or 6 feet apart, might not be quite that far, and each track contains a separate car going to different directions. Sometimes they put two in the same track. Sometimes they put Macon and Savannah both in the same track, you tag them.

Q. You take a piece of paper?

A. You take a piece of paper.

Q. And you go to each car?

A. That's right.

Q. What information do you get off of that car?

A. You get the information on which track, or the town that the car is going to.

Q. All right.

A. When the foreman starts to cutting the cars, then you line the switch and turn the cars into the track on which it is supposed to go in. That's all the flagging I've seen.

Q. Do you make up a list of every car in the cut, and as to the track it went to?

A. Yes, sir.

Q. You read the tags on the cars?

A. You don't read the tags, they've got marks on them.

Q. They've got marks on them?

A. They've got marks on them.

Q. Do you give that to the other members of the crew, each of the other members of the crew?

A. On the list? Don't have to give it to them. Lots of us always gets our own list.

Q. You mean each man in the crew did the same thing you did?

A. They got a big old flood light, and when it comes by you, you see what's on the car, and you get your list.

Q. Each man makes up his own list?

A. He could make it up if he wished to.

Q. In other words, was there a white man, a white switchman on that job too?

A. Yes, sir.

Q. Did he do the same thing you did?

A. Same thing.

Q. He made up a list too?

A. All of us standing out there getting them as they come by.

Q. In other words, you had a foreman of that crew?

A. That's right.

Q. He is a white man?

A. That's right.

Q. Then you had a white switchman too?

A. That's right.

Q. That was doing the booking and flagging?

A. Yes, sir.

Q. Then you were the colored switchman?

A. That's right.

Q. What you mean to say is that as the cut came by, why you and the white switchman that was doing the booking and flagging made up your list?

A. That's right.

Q. You made up a list just alike?

A. Just alike.

Q. You were standing there together?

A. That's right.

Q. You were making up the list?

A. That's right.

Q. Then the cars were switched according to that list that you and this white switchman made up?

A. That's exactly right.

Q. This switchman, he would help supervise the switching of the cars, would he not?

A. That's right, he would help line the tracks.

Q. He helps the foreman?

A. That's right, he helps the foreman.

Q. He helps direct the other members of the crew in switching the cars according to this list that you made up?

A. He turns the cars, and we rides them.

Q. Now then when you place these cars in an industry, you know what I mean by that, don't you?

A. I have—

Q. When you put the car in an industry?

A. You mean the industry?

Q. Industry, yes.

A. Oh, I understand you now.

Q. All right. I am sorry. When you put them in an industry, you have to make a record of that, don't you?

A. That's right.

Q. What do you call that record?
A. What do you call that record?
Q. Yes.
A. Oh, that's a record of the cars, the time the car was placed there.
Q. Placement record?
A. That's right.
Q. What do you put on that?
A. What you put on there?
Q. Yes.
A. The time you place the car, where you place it at, and was it loaded or was it empty.
Q. And you have done that, have you?
A. I didn't say I did that.
Q. You haven't done that, have you?
A. I haven't did that.
Q. So that is usually done by the switchman that is doing the booking and flagging, isn't it?
A. That's what they say.
Q. That's what he does, isn't it?
A. I reckon he do, I don't know.
Q. You don't know. You never have done that?
A. No, sir, I never have did that.

Mr. Rives:
That's all, Your Honor.

The Court:
Is there anything else with this witness?

Mr. Cooper:
No, sir.

The Court:
All right, you can come down.

(Witness excused.)

A. C. CAIN, one of the Plaintiffs herein, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:
Q. Your name is A. C. Cain, is that right?
A. Yes, sir.
Q. C-a-i-n?
A. C-a-i-n.
Q. You work for the Central of Georgia, a Defendant in this case, don't you?
A. Yes, sir.
Q. Where do you work?
A. I work between Albany and Dothan.
Q. What job do you hold?
A. 99 and 100, local freight between Albany and Dothan.
Q. Is that a road job?
A. That is a road job.
Q. Now as a colored brakeman on the road job you are not permitted to work the job of flagman, are you?
A. No, sir.
Q. And you are not permitted to work the job of baggage master or conductor?
A. No, sir.
Q. That is the practice under the contract that is in existence with the Brotherhood?

A. Yes, sir, that's right.

Q. How long have you been a railroad man?

A. Well, I have been around some 20 years, not all of that together, because I worked in the freight house some, but I have been out on the road for 13 years.

Q. You worked in the freight house before you went on the road?

A. Yes, sir.

Q. Is that work something like what a baggage man has done?

A. Some of that is, that is where the baggage is concerned.

Q. You have never been given an opportunity to train on the job of flagman or baggage master, have you?

A. No, sir.

Q. No colored man has?

A. Not as I know of.

Q. Are you familiar with the work that the flagman does on your train?

A. Well, some of it I am.

Q. Do you, for instance, can you take the initials and number off of a freight car?

A. Yes, sir.

Q. Can you tell whether or not a freight car is loaded or empty?

A. Yes, sir.

Q. Can you tell the station point at which the railroad freight car is picked up, do you know what that means?

A. Yes, sir, the number.

Q. I beg your pardon?

A. You mean the number, or the station?

Q. I don't know. Do they have numbers?

A. They have numbers and names.

Q. They have numbers and names for those points?

A. Yes, sir.

Q. Now can you read and write?

A. Yes, sir.

Q. How far did you go in school?

A. Seventh grade.

Q. Are you capable of keeping a record of the number of miles a train moves?

A. Yes, sir, I could do it if I was trained. I have never did it, but I could do it.

Q. You of course are familiar with the difference between boxcars and gondolas?

A. Yes, sir.

Q. Have you ever seen a waybill or switch list?

A. Yes, sir.

Q. Have you ever seen those in the hands of a foreman?

A. I've seen those in the hands of a foreman and the conductor, either one.

Q. Do you think that you could, if given an opportunity, read one of those and become familiar with it?

A. Yes, sir.

Q. Have you ever heard the phrase "Light weight of the car"?

A. Yes, sir.

Q. What is that, do you know?

A. That is the actual weight of the car.

Q. Actual weight of the car?

A. Yes, sir.

Q. Does that come off of the car, does the flagman or the conductor get that off of the car?

A. He gets it off of the boxcars, out of the boxcars.

Q. You are not a member of the BRT or the Brotherhood that is a Defendant here, are you?

A. No, sir.

Q. Have you ever been permitted to vote on any contract that they were negotiating?

A. No, sir, I have never voted on any contract.

Q. Have you ever voted for any local officers or national officers or anything of that kind?

A. No, sir.

Q. I believe you have a copy of the 1952 contract?

A. Yes, sir.

Q. Is that the copy you gave to me or do you still have your copy?

A. I have one at home.

Q. How did you get that copy?

A. That one was sent—I was down on the Dothan switch local at the time, and they sent three copies down there, and I signed for that one myself.

Q. Now had you ever been given a copy of the contract before that?

A. I never had had a copy before that.

Q. Now last year were you rolled off of a job that you were holding regularly?

A. Yes, sir, I was.

Q. Were did you go when you were rolled?

A. I went to Dothan, to the Dothan switch local, what they call pulled.

Q. You were pulled?

A. Pulled off the local.

Q. When you were pulled were there any white men younger than you in seniority who were left working regularly as flagmen?

A. Yes, sir, I believe there was, Mr. Melton.

Q. But you left home did you and went to Dothan?

A. Yes, sir.

Q. Did that subject you to any additional expense, living away from home?

A. Well I would say some, because you see you have got just about as much expense at home when you are away as when you are there, not much.

Q. Do you know a man named Marsh Nelson?

A. Yes, sir.

Q. Is he a colored brakeman?

A. Yes, sir, he is.

Q. Did he get rolled off or pulled off his job?

A. Yes, sir, he got pulled too.

Mr. Miller:

I object to this line of testimony unless it is shown he knows this of his own knowledge. This is hearsay.

The Court:

Do you know this of your own knowledge?

The Witness:

Yes, sir, I know it.

The Court:

Overruled. What was his name?

Mr. Cooper:

M-a-r-s-h N-e-l-s-o-n.

Q. Marsh Nelson?

A. Yes, sir.

Q. When Nelson was pulled off his job was there any man left, any white man working as baggage man or flagman that had less seniority than he?

A. Yes, sir, at that time there was.

Q. Who was that, do you remember his name?

A. His name was Mr. Melton, the same fellow I mentioned, Mr. Melton. I think his initials is J. J. Melton.

Q. Where did Marsh Nelson go when he was pulled off of his job as brakeman?

A. He went to the extra board.

Q. He went to the extra board?

A. Yes, sir.

Q. Is he still on the extra board now?

A. Yes, sir, he is still on the extra board now.

The Court:

Who was it that took his place?

Mr. Cooper:

Nelson.

The Witness:

I thought you said was there a man younger than him working when he was pulled.

Q. Yes.

A. Yes, sir.

Q. That was Melton?

Mr. Miller:

The Judge's question is who took his place.

The Witness:

Mr. Hill pulled him the last time.

Q. Mr. Hill?

A. Hill. I don't know his initials, but Mr. Ralph Hill, Mr. Ralph Hill.

The Court:
He pulled who?

The Witness:
Nelson.

The Court:
Nelson?

The Witness:
Yes, sir.

The Court:
He was senior to Nelson?

The Witness:
Yes, sir, he was senior.

Q. He was senior to Nelson?
A. Yes, sir.
Q. But the young white man was left as baggage man or flagman, who had less seniority than Nelson?
A. That's right.

Mr. Cooper:
All right.

Cross Examination.

By Mr. Miller:
Q. A. C., when you were rolled and went to Dothan, what job were you on?
A. I went to the Dothan switch local.
Q. What job were you on?

A. 99 and a 100, that is the local freight between Dothan and Albany.

Q. Who were you rolled by?

A. Mr. Young.

Q. He has more seniority as brakeman than you did, didn't he?

A. Yes, sir.

Q. Isn't it a fact, since you have been working for the Central of Georgia you have never been rolled from a job by a man that had less seniority?

A. Not less, no, sir, not nobody with less.

Q. You have been rolled by a man with more seniority?

A. Yes, sir.

Q. Have you ever rolled a man with less seniority than you?

A. I have rolled—I have never—you mean colored or white?

Q. Either one.

A. Yes, sir, I have, if he was braking.

Q. That's right. That is a standard practice in railroad employment, to roll a man with less seniority, isn't it?

A. When it comes under our heading as brakeman.

Q. That's right.

A. I can't roll one flagging, I don't care how much less seniority he has. Braking I can.

Q. And you have rolled him?

A. I have rolled him.

Q. You say this Marsh Nelson was rolled by Ralph Hill who had more seniority than he as a brakeman?

A. Yes, sir.

Q. I believe you said a man named Melton, a white man named Melton was left on a run?

A. That's right, he was flagman, baggage master I think, on the passenger train.

Q. You say he had less seniority than Nelson?

A. Yes, sir.

Q. You mean less seniority as an employee on the railroad?

A. That's right, yes, sir.

Q. You didn't mean Nelson had any seniority as flagman, did you?

A. Well, no, sir. You don't have any flagging.

The Court:

Nelson himself was a brakeman, was he?

The Witness:

Yes, sir.

Mr. Miller:

No further questions.

Mr. Rives:

Just a minute, Cain.

By Mr. Rives:

Q. I believe you say that you have got one of these 1952 contracts at home?

A. Yes, sir, I have one.

Q. And you gave Mr. Cooper one?

A. Yes, sir, I sent him one, yes, sir.

Q. Out of the three copies of the contract that were sent to Dothan, you got two of them, is that right?

A. No, sir, that one wasn't mine, a fireman brought me that from Macon. I forget who it was.

Q. When you got that 1952 contract you showed it to Willie Lawton, didn't you?

A. To Willie Lawton?

Q. Yes.

A. I don't remember whether I did that or not, because Willie Lawton was in Eufaula at that time.

Q. He was where?

A. He was in Eufaula at the time.

Q. Did you ever discuss the contract with Willie?

A. Yes, sir, I have discussed it with him.

Q. You have shown him the contract, and you all have discussed the provisions?

A. I have never shown it to him, I have discussed it with him.

Q. You have discussed it with him?

A. Yes, sir.

Q. You have discussed it with these other boys, haven't you?

A. Yes, sir, we all discussed it some.

Q. Yes. And you discussed it with them right after you got your copy of it, didn't you?

A. No, sir, I wouldn't say right after. I be frank, I don't know exactly what time it was.

Q. From time to time ever since you have gotten the copy of the contract you have discussed it with these other boys?

A. I can't say the other boys.

Q. Which ones of them do you remember discussing it with?

A. I discussed it with Willie Lawton. The others, I don't know.

Q. Do you know what a wheel report is?

A. Well, practically I do.

Q. Practically?

A. Yes, sir, I mean I had never did it, but I have been around there with them doing it.

Q. Do you know what they put in a wheel report?

A. I can't say I know it all, but I do know some of the things.

Q. Do you know where they get the information that goes in a wheel report?

A. Some of it they get off the cars and the way-bills which they have forms they make them out in.

Q. There is a lot of information that goes in that report?

A. Yes, sir, quite a bit.

Q. You have seen the flagman making it out?

A. Yes, sir, I've seen the flagman making it out.

Q. You never have made out one of them?

A. No, sir, I never have made out one of them.

Q. Do you know Mr. B. G. Byington here?

A. Yes, sir.

Q. As a matter of fact—

Mr. Cooper:

I am sorry, I didn't get that name.

Mr. Rives:

B. G. Byington.

Mr. Cooper:

How do you spell that name?

Mr. Rives:

B-y-i-n-g-t-o-n.

Q. He is General Chairman for the Brotherhood of Railroad Trainmen on the Central of Georgia, isn't he?

A. Yes, sir.

Q. Didn't you here a while back have a grievance against the Company about some lost time?
A. Yes, sir.
Q. Did you go to him and ask him to handle it?
A. I believe the Local Chairman handled it.
Q. It was handled, they got your pay for you?
A. Yes, sir, they did.
Q. You wrote Mr. Byington a letter of appreciation for getting it for you, didn't you?
A. Certainly did.

Mr. Rives:
I think that's all.

Mr. Cooper:
That's all. I think that's all we have, Judge.

(Witness excused.)

All right, Mr. Rives.

L. E. CHESTER, called as a witness by and on behalf of the Defendant Brotherhood of Railroad Trainmen, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Rives:
Q. This is Mr. L. E. Chester?
A. That is correct.
Q. Where do you reside?
A. Jacksonville, Florida.
Q. Are you officially connected with the Defendant, the Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. In what capacity?

A. As a Deputy President.

Q. I will ask you if the Brotherhood of Railroad Trainmen is an unincoporated association consisting of a Grand Lodge and subordinate lodges scattered throughout the United States?

A. That is correct, sir.

Q. United States and Canada?

A. United States and Canada.

Q. Is Birmingham Lodge No. 590 Brotherhood of Railroad Trainmen a subordinate Lodge of the Defendant of Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Where is it located?

A. Birmingham, Alabama.

Q. Does Birmingham Lodge No. 590 have any jurisdiction whatever over the properties of the Central of Georgia Railway Company?

A. No, sir, it does not.

Q. Does it have anything to do with the schedule of wages or working agreements between the employees of the Central of Georgia Railway Company and the Central of Georgia Railway Company itself?

A. Nothing whatsoever.

Q. Are any of the employees of the Central of Georgia Railway Company members of Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen?

A. No, sir, they have no right to belong to that Lodge.

Q. What railroads does Birmingham Lodge No. 590 have jurisdiction over?

A. Seaboard, the L&N and Frisco, the Birmingham Southern. I believe that is all.

Q. Now do you know the Defendant, Lester L. Watkins?

A. Yes, sir, quite well.

Q. Is he a member of the Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen?

A. He is.

Q. Do you know whether he has any jurisdiction, or do you know what position or connection he has with that Lodge?

A. Yes, his position is that of Chairman of the Local Grievance Committee on the L&N Railroad, representing yard men.

Q. At what place?

A. Anniston, Decatur and Birmingham and one other small yard.

Q. Gadsden?

A. Gadsden.

Q. Does the Local Chairman, Lester L. Watkins, have any jurisdiction whatever over the properties of the Central of Georgia Railway Company?

A. None whatsoever.

Q. Does he have anything to do with the working agreements of the employees of the Central of Georgia with the Central of Georgia Railway Company?

A. No, he does not.

Q. Does he have any jurisdiction whatever over any of the employees of the Central of Georgia Railway Company?

A. Not as a representative of the Brotherhood.

Q. You are here as the representative of the Defendant, the Brotherhood of Railroad Trainmen, is that right?

A. That is correct, sir.

Mr. Rives:

You may take the witness.

Cross Examination.

By Mr. Cooper:

Q. Mr. Chester, just one or two questions, please, sir. Are there Local Subordinate Lodges like Local Lodge No. 590 that have members who work for the Central of Georgia Railway Company, the Defendant here?

A. Yes, sir, there are five such.

Q. There are five such?

A. Yes, sir.

Q. Do you happen to know the numbers?

A. I can't give them all to you from memory. I could get them right quick. There is one at Columbus, 376, and 549 I believe, and three others, I don't know offhand from memory.

Q. Are they all under your jurisdiction to the extent that you have jurisdiction?

A. My jurisdiction goes where the President of the organization says it shall go, and where I shall go.

Q. Did you receive your notice of this lawsuit from Birmingham Lodge No. 590?

A. Oh no, I receive my notice from the President of the Brotherhood of Railroad Trainmen, who sent me a copy and says "Go down."

Mr. Cooper:

We have no further questions.

Mr. Miller:
We have no questions.

Mr. Rives:
That's all.

The Court:
You can step aside.

(Witness excused.)

The Court:
Is there any further testimony?

Mr. Rives:
All of the Defendants whom I represent rest.

The Court:
Is there any rebuttal?

Mr. Cooper:
I don't believe there is. Do you have anything else?

Mr. Miller:
No, sir, Defendant, Central of Georgia rests.

The Court:
You represent everybody except the Central of Georgia?

Mr. Rives:
That's right, Your Honor.

Mr. Cooper:
We have no further evidence.

Mr. Rives:
We rest.

The Court:
All right, gentlemen. We will take a few minutes recess at this time.

(A recess was had.)

The Court:
Gentlemen, the Court wishes to express its appreciation for the able presentation of the case and the arguments.

I might state that I have read all of the decisions dealing with this subject, the Steele and Tunstall and Graham and Mitchell and Rolax and the Howard case.

I might state that I don't feel that the Court is traveling in an uncharted sea so far as this case is concerned. I don't think the Court can escape the compass and the impact of those decisions as related to the facts in this case.

The Court is of the opinion:

1. That this Court has jurisdiction of this action, and that there is a justiciable controversy here involved.

2. That the Plaintiffs do not have an adequate, or as for that, an available administrative remedy. And I need not elaborate on that, because the Supreme Court, in the Steele case, devoted two or three pages to a discussion of that issue. That matter is also dis-

cussed and decided in the Graham and the Howard cases.

3. That since the Plaintiffs do not have an available administrative remedy; the sixty day and one year contract limitation which bars such administrative remedy is without applicability here.

4. That since the contract prohibits Negroes from being used as baggagemen or flagmen, and in view of the evidence showing that these Plaintiffs are not permitted to bid on those jobs, Plaintiffs were not, as a condition precedent to relief, required to bid for the jobs of baggageman and flagman. The law does not require them to do a futile thing.

I might state that in 1919, when the original contract was first entered into, the Railway Labor Act was not in effect. That Act, as I recall, was first adopted in 1926. However, in making any contract of that nature which involved interstate commerce, the parties had to contemplate that Congress reserved the right to regulate commerce and might pass legislation affecting the contract.

Furthermore, the contract here involved, or perhaps more than one other contract, has been made since the passage of the Railway Labor Act, and, of course, that Act is read into all such contracts made.

5. Apart from any right of the Central of Georgia to discriminate in employment on account of color, and since the Brotherhood, the bargaining representative, is prohibited by statute and by the decisions construing the statute from making a contract con-

taining the provisions here challenged, such provision is discriminatory and void, and neither the Brotherhood nor the railroad is entitled to take the benefits thereof. That was specifically held in the Steele, and the Rolax cases. That is not to say that the railroad does not have a right to contract in its own behalf, but it is to say when contracting with the Brotherhood who was acting as fiduciary on the part of all the employees, it cannot take any benefits under that contract if the contract is discriminatory as the Court holds that it is.

6. That since discrimination against the Plaintiffs extends to the opportunity to train for certain jobs that would permit them to advance in the line of seniority, the fact that the Plaintiffs, or some of them, are now without experience in those jobs would not appear at this time to be of material or controlling importance.

7. That the Plaintiffs are not entitled to relief as to Lodge 590 or Defendant Watkins, but are entitled to the relief prayed for as against the Grand Lodge and the Railroad.

8. That if damages are now insisted upon, the question of damages is reserved for determination by a special master upon a reference. Plaintiffs' attorney will prepare and present a decree or reference.

9. Plaintiffs are entitled to their costs.

10. Plaintiffs' counsel will submit a findings of fact, conclusions of law and judgment under Rule 52, within the issues and the evidence, and not inconsistent with this finding of the Court.

All right, gentlemen.

Mr. Rives:

I don't know whether we are required to formally note an exception to Your Honor's opinion, but we want to make that reservation.

The Court:

All right, you may have that exception of course. And the Court's decree of course will be included in the findings of fact and conclusions and judgment. Of course a copy of that will be submitted to you and you have a right of course under the rules to suggest other findings in the case.

Mr. Sadler:

In so far as it applies to the Central of Georgia, we would like to adopt that.

The Court:

All parties Defendant have that right.

* * * * * * * *

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

Filed October 29, 1954.

In the United States District Court for the Northern District of Alabama, Southern Division.

Odell Jones; Dock Rutledge; A. C. Cain; Major Threat, et al., for and in behalf of themselves and others similarly situated, Plaintiffs,

vs. Civil Action No. 7760.

Central of Georgia Railway Company, a corporation; Brotherhood of Railroad Trainmen, et al., Defendants.

This cause having come on for hearing on the Plaintiffs' prayers for declaratory judgment, permanent injunction and incidental damages, and the Court having heard and considered the evidence and pleadings, and having examined the exhibits, and having heard argument by counsel, makes the following

Findings of Fact.

1. Plaintiffs O'Dell Jones, Dock Rutledge, A. C. Cain, Major Threat, L. J. Taylor, James A. Baker, Eddie Williams, Lucien L. Mabry, James Sparks, Jesse James, Nottingham Frye, R. D. Gooden, E. Hines, Floyd Johnson, E. V. Allen, C. C. Peek, James Hicks, Willie Taylor, Sebron Jordon, James Danley, Clarence Hicks, Hurley Gooden, Robert L. Scott, C. Barnett, W. B. Wilson, Jewett Howard, Irwin Allen, Lennard Bell, Joe Bell, Robert Berry, Emmitt Buggs,

Freeman Gilbert, Alex Harris, Gabriel Hoskin, Nelson Jackson, Willie Lawton, March Nelson, Henry Denson, Eugene Flournoy, John Golden, H. Hardwick, Leon Morman, S. Nathaniel, Fate Nelson, Mayo Oliver, Henry Patterson, Otis Ray, Willie Robinson, Ralph Smith, Milton Thomas, James L. Warren, H. Williams, Jr., William Griffin, Albert Jackson, Louis Littleton, R. L. Taylor, Green Wilcox, Bill Davis, Moses S. Smith, and George Nelam, are Negroes and citizens of the United States employed by the Central of Georgia Railway Company (hereinafter called "defendant Railway") as trainmen working as switchmen or brakemen. All plaintiffs have substantial seniority, based upon continuous service, in their respective seniority districts, as trainmen on the lines, or in the yards of the defendant Railway.

2. This is a class action brought by plaintiffs on their own behalf and on behalf of all Negro trainmen employed by the defendant Railway. There are common issues of law and fact affecting the rights of plaintiffs and other Negro trainmen of the defendant Railway similarly situated.

3. Defendant Railway is a corporation operating as a common interstate carrier. It is engaged in and is doing regular, continuous and substantial business in the Northern District of Alabama.

4. Defendant Brotherhood of Railroad Trainmen (hereinafter referred to as "defendant Brotherhood") is a national unincorporated association whose membership consists in chief part of white trainmen (commonly known as brakemen, flagmen, switchmen, baggagemen and conductors) employed by various rail-

roads engaged in interstate commerce, including the defendant Railway. Defendant Brotherhood acts as a bargaining representative under the Railway Labor Act within and has a local subordinate Lodge within the Northern District of Alabama, Birmingham Lodge No. 590. Birmingham Lodge No. 590 and defendant Lester L. Watkins are true and adequate representatives of the Brotherhood and its members in this District. However, the defendant Brotherhood has voluntarily appeared in this action and has waived any objections to service of process or venue.

5. Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen is a subordinate Lodge and Branch of the Brotherhood. Its membership does not include employees of the defendant Railway.

6. Defendant Lester L. Watkins is an officer of said Birmingham Lodge No. 590. His duties as such do not relate to employees of defendant Railway.

7. Defendant Brotherhood is and has been in the past the exclusive representative under the Railway Labor Act (45 U.S.C. Sect. 151, et seq.) of the class of craft of trainmen, including plaintiffs, employed by the defendant Railway.

8. Defendant Brotherhood's members constitute and have in the past constituted the majority of the craft or class of trainmen on the defendant Railway and the defendant Brotherhood under and by virtue of the Railway Labor Act acts and has acted as the sole bargaining agent and representative of the entire class of trainmen, including plaintiffs and other similarly situated employed by defendant Railway. As

such agent, defendant Brotherhood negotiated agreements with the defendant Railway as to rates of pay, rules and conditions of employment for all members of the said class or craft including the agreement which is defendant Railway's Exhibit 3, effective August 1, 1952, and specifically paragraphs (a) and (b) of Article 26 of said agreement governing seniority and the filling of vacancies as follows:

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggagemen, brakeman, or switchman, except that negroes are not to be used as conductors, flagmen, baggagemen or yard conductors.

"(b) Negroes are not to be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights. White men are not to be used as porters; no porter to have any trainman's rights except where he may have established same by three months continuously in freight service."

Negro trainmen, including plaintiffs, are now and have been in the past excluded from membership in the defendant Brotherhood and do not have now and have not had in the past any voice in selecting or controlling the officers of defendant Brotherhood who determine and execute its collective bargaining policies and collective bargaining agreements, current and past, including the agreement referred to above in this paragraph and practices thereunder.

9. Since these plaintiffs and the trainmen for whom this class action is brought are all Negroes, they are and have been, by the practices and agreements of defendants Railway and Brotherhood, made ineligible for assignment as or to train for flagmen, baggagemen, conductors, and lister switchmen (lead men or switchmen performing "booking and flagging" in yard service). Many have served for long periods of time as brakemen and switchmen on the lines of the Defendant Railway and the seniority which they have thus acquired entitles them, but for the actions of defendants, to obtain better paid, more desirable and more steady runs and assignments on the defendant Railway.

10. White brakemen pursuant to defendants' agreements and practices promote or are assigned as flagmen and baggagemen and are permitted thereafter to retain their seniority as brakemen. Negro brakemen are not permitted to promote to and are not assigned as flagmen, baggagemen and other more desirable jobs. Junior white trainmen are permitted to work as flagmen or baggagemen while Negro trainmen, with greater seniority, are displaced from their jobs as brakemen. Junior white trainmen are permitted to work upon regular assignments as flagmen, while Negro trainmen, with greater seniority, are required to work upon the extra board.

11. These Negroes now serving as brakemen are actually qualified to serve as and most have, on various occasions, satisfactorily performed the duties of flagmen. The occupations of flagmen and brakemen are essentially the same except that one operates from the back of the train while the other oper-

ates from the front. Record-keeping which is performed by flagmen is relatively simple and can be performed by a person capable of reading and writing. All of the defendant Railway's trainmen, including plaintiffs, must know how to read and write in order to become trainmen; and all must pass the same examinations as white trainmen.

12. Switchmen are yard employees of the defendant Railway. Defendants have similarly discriminated against them because they are Negroes.

13. The duties of a switchman consist mainly of making the necessary connections to pick up freight cars and the necessary disconnections to drop off freight cars at various industries, of giving signals when necessary for train movements, of braking and letting off brakes when necessary, etc.

14. Switchmen are supervised by yard foremen whose sole responsibility it is to keep certain records and make physical entries therein.

15. Until fairly recently the little flagging which needs to be done around the yard was done by any switchman, white or Negro.

16. Yard foremen have now begun to delegate varying amounts of their record keeping, depending on the individual foreman, to a particular white switchman (or switchmen) in the crew and to assign what little flagging there is to those white switchmen. These particular switchmen became known by the term switchman "capable of booking and flagging", or "lister switchman". Job openings then were posted

separately for switchmen "capable of booking and flagging" and "lister switchmen" and for just plain "switchmen". The practice developed under which Negroes cannot bid on the jobs involving "booking and flagging" or on "lister switchman" jobs, but white men can bid both for a plain switchman's job and a job involving "booking and flagging".

17. Those Negroes serving as switchmen now are actually qualified to perform the duties of "lister switchmen", or "booking and flagging" switchmen. The duty of record-keeping or making physical entries upon records which is allegedly a part of the "lister switchman's" duties is, in fact, a part of the "yard foreman's" duties and is relatively simple. The flagging which is allegedly a part of the "lister switchman's" duties is, historically, a part of every switchman's duties. Furthermore, most of the Negro switchmen have satisfactorily "booked and flagged" when no white men were available with no complaint from defendant Railway and have thereby qualified to work as such.

18. The practice of prohibiting Negroes from serving as "lister switchmen" or "booking and flagging switchmen" has in the past resulted in Negro switchmen, older in point of seniority, being relegated to the extra board to catch irregular runs or being eliminated from the service altogether when white switchmen, younger in point of seniority, were working regularly in the same yard as "lister switchmen".

19. The discriminations on the basis of color described above between brakemen and flagmen have damaged Negro brakemen in that they have been

forced to accept runs away from home on occasions and, thus, to bear unnecessary expense and discomfort.

20. As a result of and pursuant to the above agreements and practices, these plaintiffs and other Negro trainmen have been denied assignments to which they would have been entitled by virtue of their seniority had they been dealt with on the same seniority basis as white trainmen and have been assigned to jobs which were less desirable, less remunerative, and more onerous; and some plaintiffs have been forced out of employment entirely.

21. The denial of fair treatment to plaintiffs in regard to their seniority and job assignments is not justified or required by the defendant Railway's needs for training potential conductors.

22. There are already trained and available considerably more conductors than there are conductor's jobs on defendant Railway's lines. There is no shortage of trained conductors and no such shortage is imminent.

23. Many of plaintiffs have been found qualified to perform the duties of "lister switchmen" (lead men or switchmen performing "booking and flagging") but they have been denied the right to permanent assignment to such jobs.

24. The defendant Brotherhood as the sole bargaining agent and representative of the entire class of trainmen including plaintiffs upon defendant Railway's lines has made no demands on the defendant

Railway to eliminate or remove from the agreements (or to eliminate the above practices) unfairly denying plaintiffs' seniority rights as trainmen.

25. The defendant Brotherhood is continuing and is threatening to continue to insist upon the application by the defendant Railway of the above contract provisions and practices further to discriminate against these plaintiffs and other similarly situated with respect to job assignments and the right to train for same. And defendant Railway, without objection has applied and is continuing and threatens to continue to apply said provisions and practices against plaintiffs and others similarly situated.

26. The illegal discriminations practiced by the defendants Railway and Brotherhood against the plaintiffs have proximately caused damages to the plaintiffs in being required to transfer and work away from home, being deprived of job assignments, and in being assigned to and required to work at jobs that have been less desirable and less remunerative than the jobs to which plaintiffs would have been assigned, had no such illegal discriminations been practiced by said defendants.

27. The failure of defendant Brotherhood to represent plaintiffs fairly and without hostile discrimination because of color caused plaintiffs not to be assigned to jobs and not to enjoy the right to train therefor, in the manner in which white trainmen were assigned and permitted to train, upon the basis of continuous service.

28. The denial to plaintiffs of jobs and assignments and the right to train therefor as set out above and the consequent damages, constitute irreparable injury for which there is no adequate remedy at law.

On the basis of the foregoing findings of fact, the Court makes the following

Conclusions of Law.

1. This Court has jurisdiction of the parties and the subject matter, and venue is properly laid.

2. The Brotherhood of Railroad Trainmen as collective bargaining representative, under the Railway Labor Act, of the entire class or craft of trainmen employed by defendant railway owes and has owed a statutory fiduciary duty, and duty of agency, to represent all members of the craft fairly and properly and without discrimination.

3. Defendant Brotherhood has not represented and is not now representing plaintiffs and other Negro trainmen similarly situated without discrimination because of plaintiffs' race.

4. The provisions limiting and restricting plaintiffs' seniority rights (including restrictions on the right to promote and to be used in various jobs and assignments) as trainmen or denying plaintiffs' seniority based upon continuous service in the contract which is defendant's Exhibit 1, in particular, Article 26, paragraphs (a) and (b) thereof, to the extent kept in effect since passage of the Railway Labor Act discriminate against, apply unfairly to, do not

amount to good faith collective bargaining representation of plaintiffs and the class plaintiffs represent, and are illegal and void. Practices thereunder which discriminate against plaintiffs are likewise illegal.

5. The Railway Labor Act must be read into, and determines the validity of, any such contract entered into subsequent to the passage of that Act. The contract in question was entered into after the Act's passage.

6. Plaintiffs are entitled to seniority rights (including the right to promote and to be used in various jobs and assignments) under existing contracts and practices between defendants Brotherhood and railway which white trainmen enjoy when said illegal provisions and practices are not applied.

7. Plaintiffs do not have an adquate or available administrative remedy.

8. In the absence of any so-called available administrative remedy for plaintiffs, the contractual limitations of 60 days and one year set out in Article 30 of the contract which is defendant Railway's Exhibit 3 are without applicability here.

9. Since the illegal contractual provisions and practices described above prohibit Negroes from being used as baggagemen, flagmen or lister switchmen (lead-men or switchmen performing "booking and flagging") and in view of the evidence showing that these plaintiffs are not and have not been permitted to bid on those jobs, plaintiffs were not, as a condition

precedent to relief, required to bid for those jobs because the law does not require them to do a futile thing.

10. The defendant Brotherhood has failed to discharge its statutory duty to the class of Negro trainmen represented by plaintiffs by failing and refusing equally and similarly to seek benefits sought for the white members of the trainmen craft.

11. Since the defendant Brotherhood as collective bargaining representative is prohibited from making a contract containing the provisions and practices here challenged by plaintiffs and held by the Court to be discriminatory and void, neither the Brotherhood nor Railway is entitled to take the benefits thereof.

12. When engaging in a contract with the defendant Brotherhood which acts as fiduciary on behalf of all the employees in the class of trainmen, the defendant Railway cannot take any benefits under that contract if the contract itself is discriminatory and the Court concludes that the contract in question is discriminatory.

13. Since the discrimination practiced by defendants Brotherhood and Railway against the plaintiffs extends to opportunities to train for certain jobs that would permit plaintiffs to advance in the line of seniority, the fact that plaintiffs, or some of them, may now be without actual experience in those jobs is not material or controlling and does not bar plaintiffs from proper equitable relief.

14. The plaintiffs are not entitled to relief against defendant Birmingham Lodge No. 590 or the defendant Lester L. Watkins, but are entitled to the relief prayed for against the defendant Brotherhood and the defendant Railway.

15. Plaintiffs, including the entire class represented by named plaintiffs, are entitled to an injunction against defendants Brotherhood and Railway and to incidental damages to compensate for the losses caused by the discriminations practiced against them. The question of damages is to be referred for determination by a special master. Since it is found to be a fact that the defendant Railway and Brotherhood have caused plaintiffs' damages by the illegal discriminations practiced against them, the fact that the amount of such damages will not be capable of exact proof will not prohibit plaintiffs from recovery of such amount of damages as can be established by reasonably satisfactory evidence.

16. Plaintiffs' incidental damages should include an amount representing the difference between plaintiffs' actual earnings and the respective amounts plaintiffs would have earned had each of them been assigned jobs and runs and permitted to train for same, upon the basis of continuous service seniority as was done for white trainmen, together with amounts equivalent to any losses proximately caused by the above illegal discriminations.

17. Seniority rights as referred to herein and in the judgment in this case means rights to runs and job assignments (and rights to train therefor) and other benefits arising out of the contract, express or

implied, between defendant Railway and defendant Brotherhood.

18. The issues in this action are not triable or right by jury and the claims of plaintiffs for incidental damages can most appropriately and expeditiously in the discretion of the Court, because of the stress of business in this District, the number of individuals to be examined, and the nature of the individual claims, be determined by a reference to a master for an accounting thereof.

19. Plaintiffs' claims for damages are limited to the period subsequent to a date one year prior to the date of the filing of the complaint.

20. Plaintiffs are entitled to their costs.

21. An injunction should issue to embody the above and to restrain the defendants Brotherhood and Railway from further carrying out or complying with the aforesaid provisions of the above agreement referred to in Conclusion of Law No. 4 or of practices thereunder, or of any similar agreement, or proposal, or practice which prevents or would prevent plaintiffs from enjoying the seniority, including runs, job assignments, and employment rights and opportunities to train for same, to which their seniority based upon continuous service entitled them, so long as white trainmen receive job assignments, employment rights, and opportunities to train for same based upon continuous service, and to require the defendant Railway within 30 days of the effective date of the injunction herein to assign each of plaintiffs, in the entire class of plaintiffs, to the respective job or run, or to afford

opportunity for training for same, to which such seniority entitles him, so long as white trainmen are assigned to such runs and jobs, and given opportunities to train for same, by seniority based upon continuous service under the present contract or any future contract, express or implied, or any practices thereunder.

22. As a Court of equity, this Court must shape its decree to give the entire class of plaintiffs adequate relief by placing all plaintiffs in the positions they would have had if the illegal contractual provisions and practices above described had not existed, so that defendants Railway and Brotherhood may not retain the profits or benefits of the illegality involved in the execution and carrying out of those provisions and practices. So long as white trainmen by contract or practice existing upon defendant Railway exercise seniority based upon continuous service, these Negro trainmen must exercise a similar right.

Judgment.

1. On the basis of the foregoing, it is hereby Ordered, Adjudged and Decreed:

That the defendant Brotherhood of Railroad Trainmen, its officers, agents, employees, members, attorneys, and all persons in active concert or participation with them be and they hereby are restrained and enjoined from directly or indirectly requiring or inducing or compelling the defendant Central of Georgia Railway Company to recognize or comply with the provisions of the agreement between said Railway and said Brotherhood, effective

August 1, 1952, and practices thereunder and of any similar agreements applicable to Divisions of defendant Railway, and practices thereunder, or with the provisions of any other agreements, understandings or practices between the defendant Railway and defendant Brotherhood in so far as any such provisions or practices (a) require said Railway to discriminate against plaintiffs or against other Negro trainmen employed by said Railway because they are Negroes, or because they have not trained for jobs for which they have not been permitted to train and to which they have not been permitted to promote because they are Negroes, or (b) fail to grant plaintiffs' seniority rights based upon continuous service, to assignments as trainmen (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) and to train for said jobs, so long as white trainmen are given such rights.

2. It is further Ordered, Adjudged and Decreed:

That the defendant Central of Georgia Railway Company, its officers, agents, employees, members and attorneys and all persons in active concert or participation with it be and each of them is hereby restrained and enjoined from directly, or indirectly, enforcing or complying with the provisions of the agreement between said Railway and the defendant Brotherhood, effective August 1, 1952, and practices thereunder and of similar agreements applicable to the Divisions of defendant Railway and practices thereunder, or with the provisions of any other agreements, practices or understanding insofar as such provisions (a) require said Railway to discriminate against plaintiffs or against other Negro trainmen

employed by said Railway because they are Negroes or because they have not trained for jobs as to which they have been denied promotion and training because they are Negroes, or (b) deny plaintiffs' seniority rights based upon continuous service to jobs as trainmen (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) or opportunities to train for said jobs, so long as white trainmen are given such rights.

3. It is further Ordered that:

(a) Defendants restore, advance, train or assign plaintiffs and other Negro trainmen, similarly situated, without discrimination because they are Negroes, to and for positions and assignments to which their seniority based upon continuous service entitles them, and that their seniority and other employment rights be re-established, established and maintained in the same manner as such rights are established and maintained for white trainmen.

(b) That the defendants cooperate together fully in the maintenance of a non-discriminatory system of job assignments and training therefor applicable to plaintiffs on the Railway and in future negotiations between the Railway and the Brotherhood as representative of the entire class of trainmen.

(c) That defendant Railway cease and desist from refusing and failing so long as white trainmen are given seniority based upon continuous service (1) to grant plaintiffs' seniority rights, assignments and opportunities to train for jobs (including baggagemen, flagmen, and lister switchmen, or "booking and flag-

ging", as used in the findings herein) as white trainmen are given, based upon continuous service; (2) to assign plaintiffs to assignments and jobs (including baggagemen, flagmen, and lister switchmen, or "booking and flagging" as used in the findings herein) and to permit them to train therefor to which their seniority as trainmen based upon continuous service entitles each of them.

(d) That defendant Railway grant said seniority rights, make said assignments of plaintiffs and allow training therefor, so long as white trainmen are given such rights, assignments and training, provided that a period of thirty days from the date of this decree shall be allowed for making said assignments effective.

(e) That the defendants Railway and Brotherhood pay to each Negro trainmen in the entire class of plaintiffs incidental damages, including the respective amounts representing the difference between plaintiffs' actual earnings and the respective amounts plaintiffs would have earned had each of them been assigned jobs and permitted opportunities to train therefor upon the basis of continuous service seniority, together with amounts equivalent to any other losses proximately caused to plaintiffs by the failure so to assign jobs and to permit training therefor; all such damages to be limited to a period subsequent to a date one year prior to the filing of the complaint herein.

(f) That the determination of the respective amounts of such incidental damages owing to each plaintiff by said defendants be referred to a special

master and the Court herewith expressly reserves the appointment of a special master to be made by an order herein specifying his powers and directing his action.

(g) The demand for jury trial be and the same hereby is denied.

(h) All costs of this proceeding be and the same hereby are taxed against defendants Railway and Brotherhood and all costs of the reference to a special master be and the same are taxed to said defendants.

(i) It is further Ordered, Adjudged and Decreed by the Court:

That the rights of plaintiffs are in accordance with the above Conclusions of Law including those contained in the opinion filed in this cause.

(j) The Court retains control of this matter so that additional orders to effect this decree may be entered.

Done this 29th day of Oct., 1954.

(S.) H. H. GROOMS,
(H. H. Grooms),
United States District Judge.

MOTION FOR SUPERSEDEAS.

Filed November 23, 1954.

(Title Omitted.)

The defendant, Central of Georgia Railway Company, a corporation, moves the Court to stay the enforcement of the judgment in this proceeding pending the disposition of the appeal to the United States Court of Appeals for the Fifth Circuit by this defend-

ant or any other defendant in this proceeding by whom an appeal is taken and for that purpose to fix the amount of the bond required to be filed by the defendant, Central of Georgia Railway Company, a corporation.

(S.) JOHN B. MILLER,
(John B. Miller),
Attorney at Law,

Savannah, Georgia.

(S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr.),
Attorney at Law,
Attorneys for Central of Georgia Railway Company, a Corporation.

Birmingham, Ala.

To: Messrs. Cooper, Mitch & Black,
Attorneys for the Plaintiffs,
First National Bank Building,
Birmingham, Alabama
and
Jackson, Rives, Pettus & Peterson,
Attorneys for Defendant, Brotherhood of Railroad Trainmen, an unincorporated association,
Massey Building,
Birmingham, Alabama.

Please take notice that the above and foregoing motion for a supersedeas will be filed in the United States District Court in Birmingham, Alabama, at

9:00 A.M. on the 23rd day of November, 1954, and it will be called up for hearing before United States District Judge Grooms immediately thereafter.

This 23rd day of November, 1954.

(S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr).

Service of a copy of the above and foregoing motion for supersedeas is hereby acknowledged as of the 23rd day of November, 1954, and all other and further notice is hereby expressly waived this 23rd day of November, 1954.

(S.) COOPER, MITCH, & BLACK,
By JEROME A. COOPER,
COOPER, MITCH & BLACK,
JACKSON RIVES, PETTUS, & PETTERSON,
By (S.) AL. G. RIVES,
JACKSON, RIVES, PETTUS & PETTERSON.

ORDER GRANTING SUPERSEDEAS.

Filed November 23, 1954.

(Title Omitted.)

This cause came on to be heard on motion of the defendant Central of Georgia Railway Company, a corporation, for a stay pending its appeal to the United States Court of Appeals for the Fifth Circuit, and it appearing to the Court that the defendant is

entitled to such a stay, it is ordered that the execution of and any proceedings to enforce the judgment entered herein on, to-wit, the 29th day of October, 1954, be stayed pending the determination of said defendant's appeal from such judgment upon the filing of said defendant and the approval by this Court of a bond in the sum of $1000.00.

This 23 day of November, 1954.

(S.) H. H. GROOMS,
(H. H. Grooms),
United States District Judge.

SUPERSEDEAS BOND.

Filed November 23, 1954.

(Title Omitted.)

We, the undersigned, jointly and severally, acknowledge that we and our successors and assigns are jointly bound to pay O'Dell Jones, Dock Rutledge, A. C. Cain, Major Threat, L. J. Taylor, James A. Baker, Eddie Williams, Lucien L. Mabry, James Sparks, Jesse James, Nottingham Frye, R. D. Gooden, E. Hines, Floyd Johnson, E. V. Allen, C. C. Peek, James Hicks, Willie Taylor, Sebron Jordon, James Danley, Clarence Hicks, Hurley Gooden, Robert L. Scott, C. Barnett, W. B. Wilson, Jewett Howard, Irwin Allen, Lennard Bell, Joe Bell, Robert Berry, Emmitt Buggs, Freeman Filbert, Alex Harris, Gabriel Hoskin, Nelson Jackson, Willie Lawton, March Nelson, Henry Denson, Eugene Flournoy John Gold-

en, H. Hardwick, Leon Morman, S. Nathaniel, Fate Nelson, Mayo Oliver, Henry Patterson, Otis Ray, Willie Robinson, Ralph Smith, Milton Thomas, James L. Warren, H. Williams Jr., William Griffin, Albert Jackson, Louis Littleton, R. L. Taylor, Green Wilcox, Bill Davis, Moses S. Smith, and George Nelam, plaintiffs, the sum of $1000.00.

The condition of this bond is that whereas the defendant Central of Georgia Railway Company, a corporation, has appealed to the Court of Appeals for the Fifth Circuit from the judgment of this Court entered October 29, 1954, if the said defendant, Central of Georgia Railway Company a corporation, shall pay the amount of the final judgment herein if its appeal shall be dismissed or the judgment affirmed or modified together with all costs that may be awarded, then this bond is void, otherwise to be and remain in full force and effect.

This 23 day of November, 1954.

CENTRAL OF GEORGIA RAILWAY COMPANY, A Corporation,

By (S.) W. H. SADLER, JR.,
One of its attorneys of record.

(S.) AMERICAN SURETY COMPANY OF NEW YORK,
Surety,

By (S.) E. JUDGE,
Its Attorney-In-Fact.

Approved:
(S.) H. H. GROOMS,
United States District Judge.

NOTICE OF APPEAL.

Filed November 23, 1954.

In the District Court of the United States, Southern Division, Northern District of Alabama.

O'Dell Jones et al., Plaintiffs,
vs. No. 7760 Civil Action.
Central of Georgia Railway Company, a Corporation, et al., Defendants.

Notice is hereby given that Central of Georgia Railway Company, a Corporation, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the judgment and ordered entered in this case on October 29, 1954.

This 23 day of November, 1954.

(S.) JOHN B. MILLER,
(John B. Miller),
Savannah, Georgia.

(S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr.)
Attorneys for Central of Georgia Railway Company, a Corporation.

Comer Building,
Birmingham, Alabama.

MOTION FOR SUPERSEDEAS.

Filed November 23, 1954.

(Title Omitted.)

The defendant, Brotherhood of Railroad Trainmen, an unincorporated association, moves the Court to stay the enforcement of the judgment in this proceeding pending the disposition of the appeal to the United States Court of Appeals for the Fifth Circuit by this defendant or any other defendant in this proceeding by whom an appeal is taken and for that purpose to fix the amount of the bond required to be filed by the defendant, Brotherhood of Railroad Trainmen, an unincorporated association.

JACKSON, RIVES, PETTUS & PETERSON,

By (S.) AL. G. RIVES,

Attorneys for Defendant, Brotherhood of Railroad Trainmen, an unincorporated association.

To: Messrs. Cooper, Mitch & Black,
Attorneys for the Plaintiffs,
First National Bank Building,
Birmingham, Alabama, and

Sadler & Sadler,
Attorneys for the Defendant Central of Georgia Railway Company, a corporation,
Comer Building,
Birmingham, Alabama.

Please take notice that the above and foregoing motion for a supersedeas will be filed in the United States District Court in Birmingham, Alabama, at 9:00 A.M. on the 23 day of November, 1954, and it will be called up for hearing before United States District Judge Grooms immediately thereafter.

This 23 day of November, 1954.

JACKSON, RIVES, PETTUS & PETERSON,

By (S.) AL. G. RIVES,

Attorneys for the Brotherhood of Railroad Trainmen, an unincorporated association.

Service of a copy of the above and foregoing motion for supersedeas is hereby acknowledged as of the 23 day of November, 1954, and all other and further notice is hereby expressly waived this 23 day of November, 1954.

COOPER, MITCH & BLACK,
(Cooper, Mitch, & Black),

By (S.) JEROME A. COOPER,
(S.) SADLER & SADLER,
(Sadler & Sadler).

ORDER GRANTING SUPERSEDEAS.

Filed November 23, 1954.

(Title Omitted.)

This cause came on to be heard on motion of the defendant Brotherhood of Railroad Trainmen, an un-

incorporated association for a stay pending its appeal to the United States Court of Appeals for the Fifth Circuit, and it appearing to the Court that the defendant is entitled to such a stay, it is ordered that the execution of and any proceedings to enforce the judgment entered herein on, to-wit, the 29th day of October, 1954, be stayed pending the determination of said defendant's appeal from such judgment upon the filing of said defendant and the approval by this Court of a bond in the sum of $1000.00.

This 23 day of November, 1954.

(S.) H. H. GROOMS,
(H. H. Grooms),
United States District Judge.

SUPERSEDEAS BOND.

Filed November 23, 1954.

(Title Omitted.)

We, the undersigned, jointly and severally, acknowledge that we and our successors and assigns are jointly bound to pay O'Dell Jones, Dock Rutledge, A. C. Cain, Major Threat, L. J. Taylor, James A. Baker, Eddie Williams, Lucien L. Mabry, James Sparks, Jesse James, Nottingham Frye, R. D. Gooden, E. Hines, Floyd Johnson, E. V. Allen, C. C. Peek, James Hicks, Willie Taylor, Sebron Jordon, James Danley, Clarence Hicks, Hurley Gooden, Robert L. Scott, C. Barnett, W. B. Wilson, Jewett Howard, Irwin Allen, Lennard Bell, Joe Bell, Robert Berry, Emmitt Buggs, Freeman Filbert, Alex Harris, Gabriel Hoskin, Nelson Jackson, Willie Lawton, March Nelson, Henry Denson, Eugene Flournoy, John Gold-

en, H. Hardwick, Leon Morman, S. Nathaniel, Fate Nelson, Mayo Oliver, Henry Patterson, Otis Ray, Willie Robinson, Ralph Smith, Milton Thomas, James L. Warren, H. Williams, Jr., William Griffin, Albert Jackson, Louis Littleton, R. L. Taylor, Green Wilcox, Bill Davis, Moses S. Smith, and George Nelam, plaintiffs, the sum of $1000.00.

The condition of this bond is that whereas the defendant Brotherhood of Railroad Trainmen, an unincorporated association has appealed to the Court of Appeals for the Fifth Circuit from the judgment of this Court entered October 29, 1954, if the said defendant, Brotherhood of Railroad Trainmen, an unincorporated association shall pay the amount of the final judgment herein if its appeal shall be dismissed or the judgment affirmed or modified together with all costs that may be awarded, then this bond is void, otherwise to be and remain in full force and effect.

This 23 day of November, 1954.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association,

By (S.) AL. G. RIVES,
One of its attorneys of record,

(S.) AMERICAN SURETY COMPANY OF NEW YORK,
Surety,

By (S.) E. JUDGE,
Its Attorney-In-Fact.

Approved:
(S.) H. H. GROOMS,
United States District Judge.

NOTICE OF APPEAL.

Filed November 23, 1954.

In the District Court of the United States, Southern Division, Northern District of Alabama.

O'Dell Jones, et al., Plaintiffs,
vs. No. 7760 Civil Action.
Brotherhood of Railroad Trainmen, an Unincorporated Association, et al., Defendants.

Notice is hereby given that Brotherhood of Railroad Trainmen, an unincorporated association, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the judgment and ordered entered in this case on October 29, 1954.

(S.) J. K. JACKSON,
(J. K. Jackson),
(S.) AL. G. RIVES,
(Al. G. Rives),
Attorneys for the Brotherhood of Railroad Trainmen, an unincorporated Association.

Tenth Floor Massey Building,
Birmingham, Alabama.

APPEAL BOND.

Filed November 24, 1954.

(Title Omitted.)

We, the undersigned, jointly and severally, acknowledge that we and our successors and assigns are jointly bound to pay to the Brotherhood of Railroad Trainmen, an unincorporated association, and to the Central of Georgia Railway Company, a corporation, defendants, the sum of Two Hundred and Fifty Dollars ($250.00).

The condition of this bond is that whereas the plaintiffs have cross-appealed to the Court of Appeals for the Fifth Circuit from the judgment of this Court entered on October 29, 1954, if the plaintiffs shall pay the amount of the costs of their cross-appeal if said cross-appeal shall be dismissed or of such cost as the Appellate Court may award if that part of the judgment from which plaintiffs have cross-appealed is modified, then this bond is void, otherwise to be and remain in full force and effect.

This 24th day of November, 1954.

O'Dell Jones
A. C. Cain
L. J. Taylor
Eddie Williams
James Sparks
Nottingham Frye
E. Hines
E. V. Allen
James Hicks

Sebron Jordon
Clarence Hicks
Robert L. Scott
W. B. Wilson
Irwin Allen
Dock Rutledge
Major Threat
James A. Baker
Lucien L. Mabry
Jesse James
R. D. Gooden
Floyd Johnson
C. C. Peek
Willie Taylor
James Danley
Hurley Gooden
C. Barnett
Jewett Howard
Lennard Bell
Joe Bell
Emmitt Buggs
Alex Harris
Nelson Jackson
March Nelson
Eugene Flournoy
H. Hardwick
S. Nathaniel
Mayo Oliver
Otis Ray
Ralph Smith
James L. Warren
William Griffin
Louis Littleton
Green Wilcox
Moses S. Smith

Robert Berry
Freeman Filbert
Gabriel Hoskin
Willie Lawton
Henry Denson
John Golden
Leon Morman
Fate Nelson
Henry Patterson
Willie Robinson
Milton Thomas
H. Williams, Jr.
Albert Jackson
R. L. Taylor
Bill Davis
George Nelam

COOPER, MITCH & BLACK,
By (S.) HUGO L. BLACK, JR.,
Attorneys of Record for Each plaintiff,
NATIONAL SURETY CORPORATION,
Surety,
By (S.) JOHN W. GIBBS,
Its Attorney-In-Fact.

NOTICE OF CROSS-APPEAL TO CIRCUIT COURT OF APPEALS UNDER RULE 73 (b).

Filed November 24, 1954.

In the United States District Court for the Northern District of Alabama, Southern Division.

Odell Jones: Dock Rutledge: A. C. Cain: Major Threat, et al., for and in behalf of themselves and others similarly situated, Plaintiffs,

vs. Civil Action No. 7760.

Central of Georgia Railway Company, a corporation, et al., Defendants.

Notice is hereby given that Odell Jones, Dock Rutledge, A. C. Cain, and Major Threat, in behalf of themselves and each member of the class represented by them as plaintiffs, hereby appeal to the Circuit Court of Appeals for the Fifth Circuit from the part of the judgment entered in this action on October 29, 1954, designated 3 (e) to the extent same limits damages awarded plaintiffs to a period subsequent to a date one year prior to the filing of the complaint herein.

The jurisdiction of this District Court has been invoked to enforce and vindicate a purely Federal statutory right. Federal Courts apply their own principles in the enforcement of equitable rights created by Federal statutes. State laws of limitations do not apply; and if they do apply, no Alabama statute of limitations would bar this action.

COOPER, MITCH & BLACK,
By (S.) JEROME A. COOPER,
Attorneys for Plaintiffs.

1329 Brown Marx Bldg.,
Birmingham, Alabama.

I certify that Jerome A. Cooper did on the 23rd day of November, 1954, serve a copy of the above and foregoing on Honorable Al G. Rives, attorney for defendant Brotherhood and the Honorable Will Sadler, Jr., attorney for defendant Railroad.

(S.) HUGO L. BLACK, JR.

DESIGNATION OF THE RECORD ON APPEAL.

Filed December 8, 1954.

(Title Omitted.)

Now comes the appellant, Central of Georgia Railway Company, a Corporation, and serves upon appellee and files with the District Court, the following designation of the portions of the record, proceedings and evidence to be contained in the record on appeal:

1. The complete record and all the proceedings and evidence therein.

2. Without limiting the foregoing, the appellant designates the following:

(a) The complaint.

(b) The plaintiffs' motion for preliminary injunction.

(c) The order of the Court setting plaintiffs' motion for preliminary injunction for hearing on September 1, 1954.

(d) The motion to dismiss of the defendant, Central of Georgia Railway Co., a Corporation.

(e) The motion to quash service and/or dismiss of the defendant, Brotherhood of Railway Trainmen.

(f) The motion to quash service and/or to dismiss of the defendant, Birmingham Lodge No. 590 of the Brotherhood of Railway Trainmen.

(g) The motion to dismiss of the defendant, Lester L. Watkins.

(h) The plaintiffs' amendment to complaint.

(i) The order of the Court overruling defendants' separate and several motions to quash or dismiss, and continuing plaintiffs' motion for preliminary injunction to October 19, 1954.

(j) The answer of defendant, Central of Georgia Railway Company, a Corporation.

(k) The jury demand filed by the defendants, Brotherhood of Railway Trainmen and Birmingham Lodge No. 590 of the Brotherhood of Railway Trainmen, and Lester L. Watkins.

(l) The answer of defendant, Lester L. Watkins.

(m) The answer of defendant, Birmingham Lodge No. 590, Brotherhood of Railway Trainmen.

(n) The answer of defendant, Brotherhood of Railway Trainmen.

(o) The amendment to answer of defendant, Central of Georgia Railway Company, a Corporation.

(p) The Court's granting of plaintiffs' oral motion to strike jury demand.

(q) The Findings of Fact, Conclusions of Law, and Judgment restraining and enjoining the defendant, Brotherhood of Railway Trainmen, etc., by the Court.

(r) The transcript of the proceedings.

(s) The plaintiffs' cost bill.

(t) The order of the Court fixing the taxation of costs.

(u) The motion of defendant, Central of Georgia Railway Co., a Corporation, for supersedeas bond.

(v) The motion of the defendant, Brotherhood of Railway Trainmen, for supersedeas bond.

(w) The order of the Court granting supersedeas bond to the defendant, Central of Georgia Railway Co., a Corporation.

(x) The order of the Court fixing the amount of the supersedeas bond of the defendant, Central of Georgia Railway Co., a Corporation, in the sum of $1,000.00.

(y) The supersedeas bond of the defendant, Brotherhood of Railway Trainmen.

(z) The notice of appeal filed by the defendant, Central of Georgia Railway Co., a Corporation.

(a-1) The notice of appeal filed by the defendant, Brotherhood of Railway Trainmen.

(a-2) The notice of cross-appeal filed by the plaintiffs.

(a-3) The order of the Court allowing the appeal bond of the plaintiffs, and fixing the amount of plaintiffs' bond at $250.00.

(a-4) Plaintiffs' exhibits 1-2, inclusive.

(a-5) The exhibits 1-3, inclusive, of the defendant, Central of Georgia Railway Co., a Corporation.

(a-6) Exhibit No. 1 of the defendant, Brotherhood of Railway Trainmen.

3. This designation of record.

SADLER & SADLER,
Attorneys for Appellant, Central of Georgia Railway Co., a Corporation.
By (S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr.).

We certify that a copy of the foregoing designation of record has this day been served on Messrs. Cooper, Mitch & Black of Counsel for the appellees in this case.

This 7th day of December, 1954.

SADLER & SADLER,
Attorneys for Appellant, Central of Georgia Railway Co., a Corporation,
By (S.) W. H. SADLER, JR.,
(W. H. Sadler, Jr.).

1311 Comer Building,
Birmingham, Alabama.

DESIGNATION OF THE RECORD OF APPEAL.

Filed December 8, 1954.

(Title Omitted.)

Now comes the appellant, Brotherhood of Railroad Trainmen, and serves upon appellee and files with the District Court, the following designation of the portions of the record, proceedings and evidence to be contained in the record on appeal:

1. The complete record and all the proceedings and evidence therein.

2. Without limiting the foregoing, the appellant designates the following:

(a) The complaint.

(b) The plaintiffs' motion for preliminary injunction.

(c) The order of the Court setting plaintiffs' motion for preliminary injunction for hearing on September 1, 1954.

(d) The motion to dismiss of the defendant, Central of Georgia Railway Co., a Corporation.

(e) The motion to quash service and/or dismiss of the defendant, Brotherhood of Railroad Trainmen.

(f) The motion to quash service and or to dismiss of the defendant, Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen.

(g) The motion to dismiss of the defendant, Lester L. Watkins.

(h) The plaintiffs' amendment to complaint.

(i) The order of the Court overruling defendants' separate and several motions to quash or dismiss, and continuing plaintiffs' motion for preliminary injunction to October 19, 1954.

(j) The answer of defendant, Central of Georgia Railway Company, a Corporation.

(k) The jury demand filed by the defendants, Brotherhood of Railroad Trainmen and Birmingham Lodge No. 590 of the Brotherhood of Railroad Trainmen, and Lester L. Watkins.

(l) The answer of defendant, Lester L. Watkins.

(m) The answer of defendant, Birmingham Lodge No. 590, Brotherhood of Railroad Trainmen.

(n) The answer of defendant, Brotherhood of Railroad Trainmen.

(o) The amendment to answer of defendant, Central of Georgia Railway Company, a Corporation.

(p) The Court's granting of plaintiffs' oral motion to strike jury demand.

(q) The Findings of Fact, Conclusions of Law, and Judgment restraining and enjoining the defendant, Brotherhood of Railway Trainmen, etc., by the Court.

(r) The transcript of the proceedings.

(s) The plaintiffs' cost bill.

(t) The order of the Court fixing the taxation of costs.

(u) The motion of defendant, Central of Georgia Railway Co., a Corporation, for supersedeas bond.

(v) The motion of the defendant, Brotherhood of Railroad Trainmen, for supersedeas bond.

(w) The order of the Court granting supersedeas bond to the defendant, Central of Georgia Railway Co., a Corporation.

(x) The order of the Court fixing the amount of the supersedeas bond of the defendant, Central of Georgia Railway Co., a Corporation, in the sum of $1,000.00.

(y) The supersedeas bond of the defendant, Brotherhood of Railroad Trainmen.

(z) The notice of appeal filed by the defendant, Central of Georgia Railway Co., a Corporation.

(a-1) The notice of appeal filed by the defendant, Brotherhood of Railroad Trainmen.

(a-2) The notice of cross-appeal filed by the plaintiffs.

(a-3) The order of the Court allowing the appeal bond of the plaintiffs, and fixing the amount of plaintiffs' bond at $250.00.

(a-4) Plaintiffs' exhibits 1-2, inclusive.

(a-5) The exhibits 1-3, inclusive, of the defendant, Central of Georgia Railway Co., a Corporation.

(a-6) Exhibit No. 1 of the defendant, Brotherhood of Railroad Trainmen.

3. This designation of record.

JACKSON, RIVES, PETTUS, & PETERSON,
Attorneys for Appellant,
Brotherhood of Railroad Trainmen,
By ERLE PETTUS, JR.

We certify that a copy of the foregoing designation of record has this day been served on Messrs. Cooper, Mitch, & Black of Counsel for the appellees in this case.

This 8th day of December, 1954.

JACKSON, RIVES, PETTUS & PETERSON,
Attorneys for Appellant,
Brotherhood of Railroad Trainmen,
By ERLE PETTUS, JR.

Massey Building,
Birmingham, Alabama.

Filed December 28, 1954.

(Title Omitted.)

It appearing to the Court that the original exhibits should be forwarded to the Appellate Court with the record on appeal in this cause, in lieu of having copies of said exhibits made.

It is hereby Ordered that the said original exhibits be transmitted to the United States Court of Appeals, Fifth Circuit, by the Clerk of this Court, for the use of said Court of Appeals, Fifth Circuit, by the Clerk of this Court, for the use of said Court of Appeals in connection with the appeal in this cause, the following original exhibits:

Plaintiff's exhibit number 1—

Plaintiff's exhibit number 2—

Defendant's exhibit number 1—

Defendant's exhibit number 2—

Defendant's exhibit number 3—

And, it is further Ordered that the above exhibits shall be received by the Clerk for the aforesaid Court of Appeals and held by him during the pendency of the appeal herein for the use of the Court and counsel without having the same printed as a part of the printed transcript of record on appeal,

And, it is further Ordered that after the termination of the proceedings on appeal, the Clerk of the aforementioned Court of Appeals shall return the said exhibits to the Clerk of this Court.

This the 28th day of December, 1954.

H. H. GROOMS,
United States District Judge.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL.

Filed December 28, 1954.

(Title Omitted.)

It appearing to the Court that additional time is needed to prepare the Record on Appeal, it is, therefore, by the Court,

Ordered that the time for filing the Record on Appeal with the United States Court of Appeals for

the Fifth Circuit and the time for docketing said action in said Appellate Court shall be extended fifty (50) days from the 2nd day of January, 1955.

Done and ordered, this the 28th day of December, 1954.

H. H. GROOMS,
United States District Judge.

CLERK'S CERTIFICATE.

United States of America,
Northern District of Alabama.

I, WILLIAM E. DAVIS, Clerk of the District Court of the United States for the Northern District of Alabama, Southern Division, do hereby certify that the foregoing pages numbered from one (1) to four hundred nine (409), both inclusive, is a full, true and correct transcript of the record on appeal in the matter of Central of Georgia Railroad Company, a corporation; Brotherhood of Railroad Trainmen, an unincorporated association, Appellants and Cross-Appellees, vs. Odell Jones; Dock Rutledge; A. C. Cain; Major Threat; et al., for and in behalf of themselves and others similarly situated, Appellees and cross-Appellants, as fully as the same appears of record and on file in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court at Birmingham, Alabama, in said District, on this the 14 day of January, 1955.

WILLIAM E. DAVIS,
(William E. Davis),
Clerk, U. S. District Court.

(Seal)

MAY 10 1956
HAROLD B. WILLEY, Clerk

No. 83

IN THE

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

No. 15,451.

TERM 19....

CENTRAL OF GEORGIA RAILWAY COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN,
Appellants and Cross-Appellees,

vs.

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN, and MAJOR THREAT, et al., for and on Behalf of Themselves and Others Similarly Situated,
Appellees and Cross-Appellants.

PETITION FOR REHEARING.

U. S. COURT OF APPEALS
FILED
FEB 21 1956
John A. Feehan, Jr.
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INDEX.

Page

Petition for rehearing 1–3

Brief and argument in support of application for rehearing by appellant Central of Georgia Railway Company 5–10

Cases Cited.

Brotherhood v. Howard, 343 U. S. 768, 72 Sup. Ct. 1022, 96 L. Ed. 1283 ..... 2, 6

Brotherhood v. Mitchell, 190 Fed. 2d 308.....2, 6, 8

Graham v. Brotherhood, 338 U. S. 232, 70 Sup. Ct. 14, 94 L. Ed. 22 ..... 2, 6

Rolax v. A. C. L. R. R. Co., 186 Fed. 2d 473..... 2, 6

Steele v. L. & N. Railroad Co., 232 U. S. 192, 65 Sup. Ct. 226, 89 L. Ed. 173.....2, 5-6

Tunstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187 ..... 2, 6

Statute Cited.

Railway Labor Act, 45 U. S. C. A. 154 et seq. 7

IN THE

UNITED STATES COURT OF APPEALS,

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TERM 19....

CENTRAL OF GEORGIA RAILWAY COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN,
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vs.

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN, and MAJOR THREAT, et al., for and on Behalf of Themselves and Others Similarly Situated,
Appellees and Cross-Appellants.

PETITION FOR REHEARING.

To the Honorable Judges of the United States Court of Appeals for the Fifth Circuit:

The Central of Georgia Railway Company, a Corporation, the Appellant above named, presents this, its Peti-

tion for a Rehearing in the above entitled cause, and, in support thereof, respectfully shows:

I.

The cases of Steele v. L. & N. Railroad Co., 232 U. S. 192, 65 Sup. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 Sup. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 Sup. Ct. 1022, 96 L. Ed. 1283; Rolax v. A. C. L. R. R. Co., 186 Fed. 2d 473; Brotherhood v. Mitchell, 190 Fed. 2d 308, which the Court regarded as conclusive on the substantive questions of law in this case are distinguishable from the case at Bar.

II.

The cases of Steele v. L. & N. Railroad Co., 232 U. S. 192, 65 Sup. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood, 323 U. S. 210, 65 Sup. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 Sup. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 Sup. Ct. 1022, 96 L. Ed. 1283; Rolax v. A. C. L. R. R. Co., 186 Fed. 2d 473; Brotherhood v. Mitchell, 190 Fed. 2d 308, did not have the effect of placing the negro employees in a status of employment to which the respective railroads had not contracted that they be placed, which is the effect of the Court's affirmance of this case.

III.

The case of Brotherhood v. Mitchell, 190 Fed. 2d 303, cited by the Court in its majority opinion, is not authority for the assessment of damages against a railroad which is the result of the Court's affirmance of this case.

Wherefore, upon the foregoing grounds, it is respectfully urged that this Petition for Rehearing be granted

and that the judgment of the District Court be, upon further consideration, reversed as to the Appellant, Central of Georgia Railway Company.

JOHN B. MILLER,
P. O. Box 642,
Savannah, Georgia,

W. H. SADLER, Jr.,
1314 Comer Building,
Birmingham, Alabama,

Attorneys for Petitioner and Appellant, Central of Georgia Railway Company.

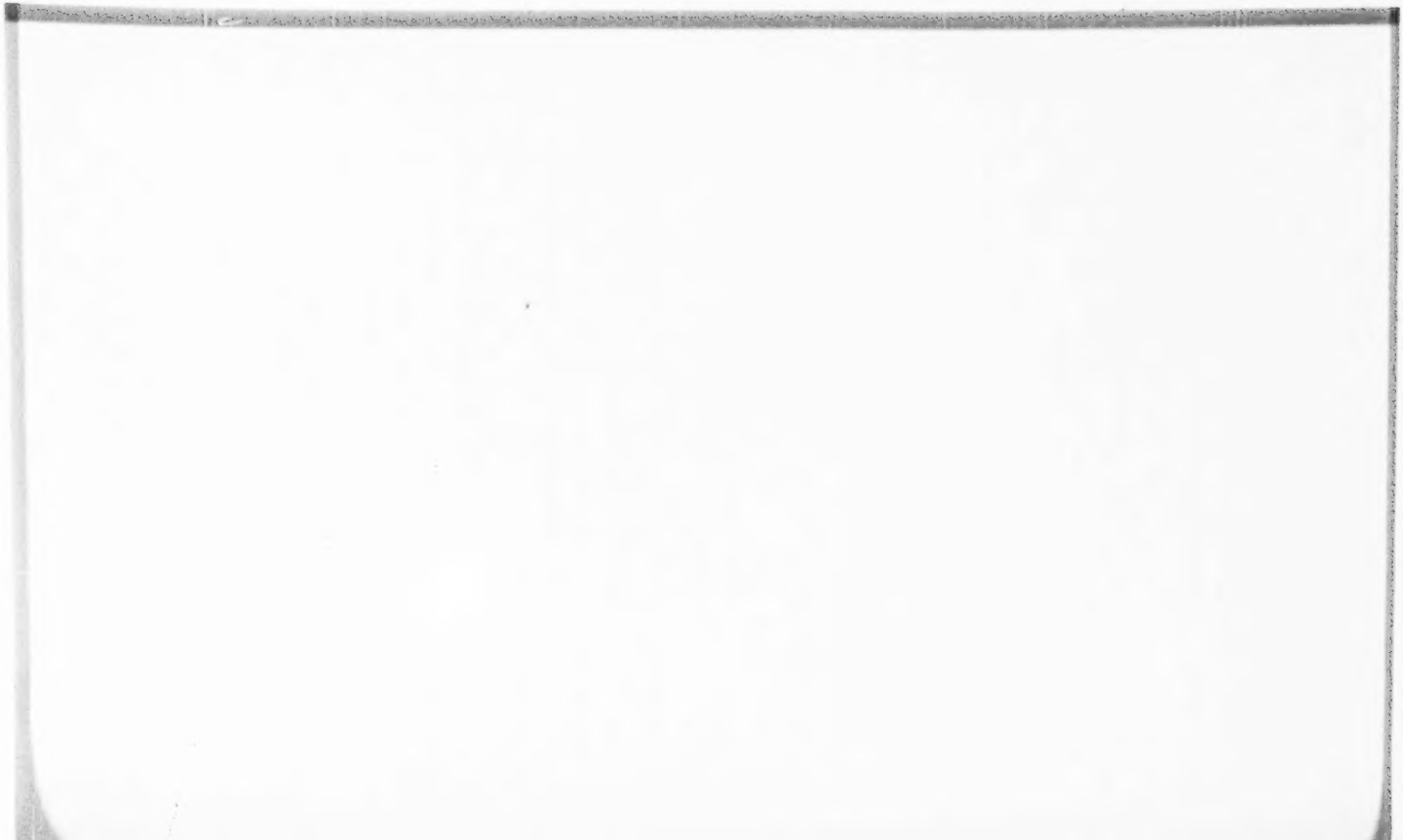
Certificate of Counsel.

I, W. H. Sadler, Jr., one of the Attorneys of Record for the Central of Georgia Railway Company, a Corporation, do hereby certify that the foregoing Petition for a Rehearing of this cause is presented in good faith and not for the purpose of delay.

I further certify that a copy of the foregoing Petition for a Rehearing has this day been served on Messrs. Cooper, Mitch and Black, 1329 Brown-Marx Building, Birmingham, Alabama, Attorneys for Appellees Odell Jones et al., and upon Messrs. Jackson, Rives, Pettus & Peterson, Massey Building, Birmingham, Alabama, Attorneys for Appellant Brotherhood of Railroad Trainmen.

This ..... day of February, 1956.

.....
W. H. Sadler, Jr.



IN THE

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

No. 15,451.

TERM 19....

CENTRAL OF GEORGIA RAILWAY COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN,
Appellants and Cross-Appellees,

vs.

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN, and MAJOR THREAT, et al., for and on Behalf of Themselves and Others Similarly Situated,
Appellees and Cross-Appellants.

BRIEF AND ARGUMENT IN SUPPORT OF APPLICATION FOR REHEARING BY APPELLANT CENTRAL OF GEORGIA RAILWAY COMPANY.

May It Please the Court:

Points One and Two of Petition for Rehearing.

Points One and Two of this Petition are so closely applied or connected that for the sake of brevity and coherency they will be discussed together.

The majority opinion takes the position that all of the substantive questions in this case have been foreclosed by the cases of Steele v. L. & N. Railroad Co., 232 U. S. 192,

65 Sup. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood, 323 U. S. 210, 65 Sup. Ct. 235, 89 L. Ed. 187; Graham v. Brotherhood, 338 U. S. 232, 70 Sup. Ct. 14, 94 L. Ed. 22; Brotherhood v. Howard, 343 U. S. 768, 72 Sup. Ct. 1022, 96 L. Ed. 1283; Rolax v. A. C. L. Railroad Co., 186 Fed. 2d 473; Brotherhood v. Mitchell, 190 Fed. 2d 308. That this is an incorrect ruling by the Court is argued with much more clarity and force by the dissenting opinion of Judge Brown than it can be by any argument of ours. Judge Brown recognizes that one of the substantive issues in this case is the assessment of damages against the Central of Georgia Railway Company, and he points out that for the Court to assess damages there must have been the violation of some duty of the Railroad Company. The railroad is being required to pay damages when it has broken no contractual obligation, has breached no common law duty and has violated no trust relationship such as exists between the Brotherhood and these appellees. The majority opinion in no way discusses this substantive point of law and we earnestly and respectfully believe that the Court erred in failing to recognize and adopt Judge Brown's comments on this issue.

The affirmance of this case will result in the creation of a new status of employment for the appellees, to which the Railroad Company has never agreed. To us, it cannot be seriously questioned but what this result constitutes an action on the part of the Court in writing a contract of employment for an employer and an employee. As we have stated before, we know of no rule of law that gives the Court this power and there is no statute by which the Congress has authorized or required that the Court do so. In fact, what the Congress has done is to require that the employment contract between this Railroad and the appellees be arrived at through the processes of collective bargaining, undertaken between the Railroad and the Brotherhood. The Railroad is powerless

to enter into a contract, except through that process, and the Railroad is further powerless to deal with any entity or group of individuals other than the Brotherhood; yet, now, we are in the position of having written for us a contract by judicial decree, which we believe violates the concept of Congress in adopting the Railway Labor Act, 45 U. S. C. A. 154, et seq., and which goes beyond the holding of the Steele case and other cases which are made the basis of the majority opinion in this case.

The result and effect of the decree in each of the cases cited by the Court in the majority opinion is to restore the negro employees to the status they held, by contract, prior to the execution of the contract, which deprived them of rights, and which was held to be discriminatory. In other words, the negro employees in the Steele and other cases were restored to a status which they had held pursuant to the terms of a contract which had been arrived at as a result of collective bargaining negotiations mandated by the terms of the Railway Labor Act. But such is not the case here. As pointed out by Judge Brown, the impact of the trial court's decree, and this Court's affirmance of the same, is to circumvent entirely the prescribed legal processes which the Congress has established for relations between a railroad company and its employees. If the Court affirms this case to the extent of declaring the discriminatory provisions void, but reverses the case as to this appellant, on the aspect of the imposition of damages and on the aspect of granting the employees job rights which they have not acquired by contract, then the Brotherhood will be under no obligation to bargain on behalf of these employees and to carry out the trust which the court has found is placed in it by the terms of the Railway Labor Act; and the right of the railroad, as an employer, to bargain for its own best interest, will remain unimpaired and unviolated. The status of the employees, as a result of that bargaining, and this Court cannot pre-

sume that the bargaining would not be carried out in good faith, would be arrived at in the manner which the Congress, by the terms of the Railway Labor Act, intended that it be done. Such a ruling by this Court would also be in complete agreement with the Steele and other cases and it would be in complete agreement with the policy of the Congress, as indicated by its failure to enact a Federal Fair Employment Practice Act. It would also recognize and reaffirm the basic legal concept that a trust placed in the Brotherhood by the Railway Labor Act does not impose a penalty on another, in whom no such trust relationship was placed, for a trust violation by the trustee.

III.

The case of Brotherhood v. Mitchell, 190 Fed. 2d 308, approves the ruling of the lower court in imposing damages on the Railway Brotherhood for sponsoring a contract discriminatory against negro firemen. In that case the trial court, we believe, in recognition of just the very points which we make here, declined to impose damages against the Railroad Company. That case, which was cited in the majority opinion, cannot be accepted as authority for the Court's ruling here. While the Court in this case might properly draw the inference that the Central of Georgia knew that the Brotherhood was not performing its statutory function properly, yet, there is no proof that any demand was ever made upon the company that the discriminatory provisions be changed or deleted from the contract of 1952. In the Mitchell case, there was proof that an actual demand was made and that for awhile the Railroad Company refused to agree, but there is also proof that ultimately it did agree to the discriminatory provisions which were the subject of that lawsuit. It seems illogical to us that the Central of Georgia should be penalized here for failing to undertake the protection of negro employees, when in the Mitchell case the Railroad was not penalized for agreeing to the discriminatory pro-

visions under issue there. Furthermore, in the Mitchell case, as well as the other cases following the Steele case, the railroads agreed to provisions which restricted contractual privileges previously accorded them, which is quite different from our agreeing to proposals made by the statutory trustee for these employees, which did not change any status which they had acquired by any prior contract which we made with the employees, either directly or through their statutory trustee.

We recognize that this case has received the mature consideration of the Court, following a reading of the record, the briefs and hearing the oral argument. In deference to the Court and in realization of the time and effort which the Court has already devoted to this case, we will not argue at length and in detail the points made in our original brief. Suffice it to say, that our position is succinctly and accurately stated in the opinion of Judge Brown, and we ask the Court that, on further consideration, Judge Brown's opinion be adopted and accepted.

Respectfully submitted,

JOHN B. MILLER,
P. O. Box 642,
Savannah, Georgia,

W. H. SADLER, JR.,
1314 Comer Building,
Birmingham, Alabama,

By: .....
W. H. SADLER, JR.

Certification of Service.

I, W. H. Sadler, Jr., one of the Attorneys of Record for the Central of Georgia Railway Company, a Corporation, do hereby certify that a copy of the foregoing Brief and

Argument in Support of the Petition for Rehearing h
this day been served on Messrs. Cooper, Mitch & Blac
1329 Brown-Marx Building, Birmingham, Alabama, A
torneys for Appellees Odell Jones et al., and upon Messr
Jackson, Rives, Pettus & Peterson, Massey Building, Bi
mingham, Alabama, Attorneys for Appellant Brotherhoo
of Railroad Trainmen.

This ..... day of February, 1956.

.....

W. H. Sadler, Jr.

JUL 3 1958
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 83

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

vs.

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN, AND MAJOR THREAT, ET AL., FOR AND ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
Respondents

BRIEF OF RESPONDENTS ODELL JONES, ET AL. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	Page
Opinions Below	1
Questions Presented	2
Statement	2
Argument	4
I. The Decision Below Is In Accord With Applicable Decisions Of This Court	4
II. Petitioner, As Well As The Brotherhood, Is Liable In Damages	8
Conclusion	9

Table of Cases

Brotherhood of R. R. Trainmen v. *Howard*, 343 U. S. 768, 773	4, 5, 7
Brotherhood of Locomotive Firemen and Enginemen v. *Mitchell*, 5 Cir., 190 F. 2d 308	4, 5, 7, 8
Gardner v. *Panama R. Co.*, 342 U. S. 29	4
Graham v. *Brotherhood*, 338 U. S. 232	4, 5, 7
Rolax v. *Atlantic Coast Line R. Co.*, 4 Cir., 186 F. 2d 473, 480	4, 5
Steele v. *Louisville & N. R. Co.*, 323 U.S. 192, 203-4,	3, 5, 6, 7, 8
Syres v. *Oil Workers International Union*, 350 U.S. 892, reversing 5 Cir., 223 F. 2d 739	4
Tunstall v. *Brotherhood*, 323 U.S. 210	4, 5, 7

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Respondents

BRIEF OF RESPONDENTS ODELL JONES, ET AL. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents file this brief in opposition to the petition for certiorari filed by the Central of Georgia Railway Company to review a judgment of the Court of Appeals for the Fifth Circuit rendered on January 31, 1956.[1]

Opinions Below

The opinion of the District Court appears at p. 362 of the record. The opinion of the Court of Appeals (R. 408) is reported at 229 F. 2d 648.

[1] The Brotherhood of Railroad Trainmen, co-defendant in the U. S. District Court, Northern District of Alabama, and co-appellant in the court below, did not file a petition for certiorari.

Questions Presented

1. Are contractual agreements and practices negotiated and implemented between a Railway and the Brotherhood of Railroad Trainmen, acting as the exclusive bargaining representative of trainmen under the Railway Labor Act, which agreements and practices impose discriminatory job restrictions upon Negro trainmen, violative of the Railway Labor Act or the Fifth Amendment to the United States Constitution?

2. Where a Railway and the Brotherhood of Railroad Trainmen, acting as the exclusive bargaining representative of trainmen under the Railway Labor Act, impose discriminatory job restrictions upon Negro trainmen by mutually negotiated and implemented contractual agreements and practices, is the Railway liable in incidental damages in an equity action by the injured Negro trainmen to enjoin these agreements and practices?

Statement

Respondents are Negro members of the craft or class of trainmen employed by the Central of Georgia Railway (hereinafter called "Railway".) Respondents have established substantial periods of continuous service. They have served either as brakemen in road service or as switchmen in yard service. The Brotherhood of Railroad Trainmen (hereinafter called "Brotherhood") is their exclusive bargaining representative under the Railway Labor Act. The Brotherhood excludes respondents from membership because off their race and color.

Prior to institution of these suits, express collective bargaining agreements, conditions of employment and employment practices, all negotiated between and applied by the Railway and the Brotherhood acting as such representative, deprived respondents of jobs and employment

opportunities (petition, p. 21-28). Those jobs and opportunities were thereby made available to white trainmen who were junior to respondents in continuous service and who were members of the Brotherhood (id).[2]

In this proceeding in equity, the District Court below granted an injunction against both the Railway and the Brotherhood, forbidding further discrimination against respondents as trainmen, and providing incidental damages against both in order to make respondents whole for breach of their statutory rights.

In its per curiam affirmance of the District Court on the merits, the Court of Appeals recognized that such discrimination on account of race and color as this record discloses is unlawful. It stated (petition, p. 14) that "the law on the substantive question is well established by *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S.Ct. 226, 89 L. Ed.

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[2] On this particular Railway, white men in the craft of trainmen hire in for road service as brakemen (trainmen who work at the front of a train). They progress by seniority to flagmen (who work at the rear of a train), baggagemen (who work in the mail car) and conductors. A white man going up the ladder of promotion, retains full seniority on each lower job as he leaves it; he may retain seniority as brakeman, flagman, baggageman and conductor; he may roll back from the top job, to any lower job upon which he has established seniority (R. 309, 314). With the colored trainmen the situation differs radically. On the road, they are never permitted to progress beyond the job of brakeman. Even so, that form of limited, though patent, discrimination worked reasonably well for a number of years. Most brakemen were colored. Then, as the Brotherhood's program of hostility was intensified, the older colored brakemen were forced off their jobs. That was accomplished as follows: A white brakeman, White, Sr., has seniority over a colored brakeman, Colored. White, Sr. promotes to flagman and on up. Colored must remain as a brakeman. White, Jr. another white man is hired as a brakeman, and it then develops that only one job of brakeman is available. White, Jr. is junior as a brakeman to Colored, the colored brakeman. White, Sr., however, rolls back from flagman and takes the single brakeman job—as he has retained his seniority. White, Jr., the junior white brakeman, promotes to the flagman job. Colored cannot promote to flagman. Colored loses his job. White, Jr., with less continuous service than Colored, continues to work (R. 309, 310, 348.) Colored is forced to bring this suit for relief. See also footnote 5, *infra*.

173; *Tunstall* v. *Brotherhood,* 323 U.S. 210, 65 S.Ct. 235, 89 L. Ed. 187; *Graham* v. *Brotherhood,* 338 U.S. 232, 70 S. Ct. 14, 94 L. Ed. 22; *Brotherhood of R. R. Trainmen* v. *Howard,* 343 U.S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; *Rolax* v. *Atlantic Coast Line R. Co.,* 4 Cir., 186 F. 2d 473; *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell,* 5 Cir., 190 F. 2d 308. See also *Syres* v. *Oil Workers International Union,* 350 U.S. 892, 76 S. Ct. 152, reversing 5 Cir., 223 F. 2d 739. As to the question of the time for which damages may be recovered, we approve the limit of one year as fixed by the District Court, and this whether under the statute of limitations or the equitable doctrine of laches. See *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell, supra; Gardner* v. *Panama R. Co.,* 342 U.S. 29, 72 S. Ct. 12, 96 L. Ed. 31."[3]

Argument

I. *The Decision Below Is In Accord With Applicable Decisions Of This Court*

This case, as recognized by the court below, is indistinguishable from *Steele, Tunstall, Graham, Howard, Rolax* and *Mitchell, supra.*

Actually, the present case differs only in that the unlawful discriminations complained of here are the more patent and in bolder relief: they are, in fact, spelled out to a large extent in the very terms of petitioner's challenged contracts.

Here, in collective bargaining contracts, colored trainmen are denied employment rights, expressly because they are colored.[4] In prior cases the racial discrimination was

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[3] Respondents herein are filing a conditional cross-petition for certiorari on the issue of the applicable statute of limitations. Therein respondents ask that their cross-petition be granted only if the Railway's petition is granted.

[4] See note 7, *infra.*

less patent. In *Steele, Tunstall, Graham* and *Mitchell,* colored firemen were discriminated against, not in explicit terms of their color, but because they were "non-promotable". In *Howard* the colored porters discriminated against were not members of the class or "craft" represented by the Brotherhood.

Here, however, colored trainmen are discriminatorily singled out as Negroes on the road jobs, and they are excluded from being "bookers", "flaggers" or "lister switchmen" in the yard.[5] "The end result of these transactions is not in doubt; for precisely the same reasons as in the *Steele* case [and in *Tunstall, Graham, Rolax* and *Mitchell,* we add] discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations." *Brotherhood* v. *Howard, supra,* at 773.

The Railway's sole witness, its director of personnel, has admitted that colored switchmen should not be excluded from booking and flagging jobs in yards (R. 283) He has also admitted that once having served as such on a tempo-

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[5] Many switching jobs in the yards were bulletined (placed up for bid) by the Railway as "booking and flagging" jobs—or as jobs calling for switchmen qualified in "booking and flagging" (R. 130). Colored switchmen were obviously qualified for such jobs. In fact, in emergencies—or on weekends and holidays when the young white men elected to be off—a colored switchman would temporarily be assigned to a "booking and flagging" job (also known as the job of "lister" switchman.) But no colored switchman was ever permitted to bid on such a job—and none was ever promoted or permanently assigned to such a job (R. 130, 324). Instead, white switchmen, junior in continuous service, were given all these jobs. Complaint by colored switchmen was futile (R. 146, 335) as more and more jobs were arbitrarily bulletined in the yards as "booking and flagging." The older colored men had fewer job opportunities and many of them were laid off while their white juniors worked on. The bulletining of yard jobs by the Railway and the designating by it of certain jobs as "booking and flagging" were done pursuant to the seniority and employment practices established by the Railway and the Brotherhood.

rary basis (when white switchmen are unavailable), they are "absolutely" qualified for permanent assignment (R. 318).[6] This Railway official apparently had not kept fully abreast of the discriminatory practice of bulletining many switching jobs in the yards as "booking and flagging" jobs (R. 305)—in particular, the rebulletining of all yard jobs in 1952 (R. 323). But one fact is certain: he did not know of any colored switchmen presently permanently assigned to one of these jobs (R. 324).

Petitioner's attempted distinction of the prior cases suggests that those cases dealt only with new, illegal agreements, destructive of rights that had been obtained pursuant to prior contracts of employment.

The cases, however, do not permit of such a distinction. What they hold is that a railroad and a bargaining representative under the Railway Labor Act cannot make discriminations based on color or race in respect to jobs, job rights and seniority rights. Here, pursuant to the illegal contract of August 1, 1952, and discriminatory practices undertaken, colored trainmen have been losing, and have been denied, job opportunities equal to those enjoyed by white trainmen of like continuous service.

The District Court below correctly concluded that: "The Railway Labor Act, must be read into, and determines the validity of, any such contract entered into subsequent to the passage of that Act. The contract in question was entered into after the Act's passage" (R. 372).

In *Steele, supra*, at 203-4, this Court stated:

> "The representative which thus discriminates may be enjoined from so doing, and its members may be enjoined from taking the benefit of such discrimina-

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[6] This executive of the Railway is a member of the Brotherhood and retains his full seniority as a conductor, flagman, baggage-master and brakeman on the Railway, by virtue of the Brotherhood's contract (R. 306).

tory action. *No more is the Railroad bound by or entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making.* In both cases the right asserted, which is derived from the duty imposed by the statute on the bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct." (Emphasis supplied).

Tunstall, decided by this Court on the same day, applied the same reasoning.

In *Graham*, the third of the leading cases, this Court found it unnecessary to recite details in addition to those which its opinions in the *Steele* and *Tunstall* cases had set out. This Court found that the *Graham* case added to the facts of the earlier cases only "a continuing and willful disregard of rights which this Court in unmistakable terms has said must be accorded to Negro firemen" (at p. 234).

Howard spelled out, once more, those rights as against a railroad and the Brotherhood of Railroad Trainmen (the Brotherhood involved in the instant case), acting in concert to discriminate against colored workers.[7]

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[7] The decision of the Fifth Circuit Court of Appeals in *Brotherhood* v. *Mitchell*, 190 F. 2d 308, came down July 11, 1951. *Brotherhood of Railroad Trainmen* v. *Howard*, *supra*, was decided by this Court on June 9, 1952. In the teeth of these definitive and penultimate decisions, with neither protest, challenge, nor argument from the Railway (R. 313), the Railway and the Brotherhood signed their current contract, openly discriminatory in terms, effective August 1, 1952, providing (see Petition, at p. 15):

"Article 26

"Seniority and Filling Vacancies.

"(a) When train or yard forces are reduced the men involved will be displaced in the order of their seniority, regardless of color. When a vacancy occurs, or new runs are created, the senior man will have preference in choice of run or vacancy, either as flagman, baggageman, brakeman, or switchman, except that negroes are not to be used as conductors, flagmen, baggagemen, or yard conductors.

The judgment below secures rights which this Court has declared applicable in terms apparently misunderstood only by the petitioner.

II. *Petitioner, As Well As The Brotherhood, Is Liable In Damages.*

The petitioner's 1952 contract with the Brotherhood (like its predecessors) is illegal on its face. It was not opposed by the petitioner. No issue was raised in the negotiation of its discriminatory provisions (R. 313). The Railway did not even object to the iniquity of these provisions as did the carrier in *Mitchell.*

The petitioner is not "entitled to take the benefits of" illegal contractual provisions to which it is a party. *Steele* v. *Louisville & N. R. Co., supra,* at 203-4. This is doubly true where its conduct was willful rather than reluctant.

Chief Judge Parker in *Rolax* v. *Atlantic Coast Line Railroad Co. et al.,* 186 F. 2d 473, 480, has completely put at rest the argument that damages are not recoverable against the Railway:

> "The defendant railroad insists that, whatever is done with respect to other matters, the judgment dismissing the suit insofar as it asks damages against the railroad should be sustained. We do not agree. While the evidence does not support the allegations of conspiracy made against the railroad, this is not the end of its liability. As the result of the agreement of February 18, 1941, which we hold to be discriminatory and void, *the railroad has failed to accord to cer-*

"(b) Negroes are not be used as flagmen, except those in that service August 27, 1919, may be retained therein with their seniority rights. White men are not be used as porters; no porter to have any trainmen's rights except where he may have established same by three months continuously in freight service."

The discriminatory practices incorporated in the contract continued unabated up to the filing of this suit.

tain of the Negro firemen the seniority rights to which they are entitled and must respond in damages on that account. The void and discriminatory agreement which it entered into with the Brotherhood will no more protect it than it will protect the Brotherhood from liability for the loss occasioned to those who were injured thereby." (Emphasis supplied).

Conclusion

Once more the federal courts have been called upon to enjoin discriminatory collective bargaining agreements and practices based upon invidious racial considerations between a carrier and a collective bargaining representative under the Railway Labor Act. The Court of Appeals below has correctly applied pertinent and indistinguishable decisions of this Court.

The Court of Appeals' judgment is correct and appropriate in affirming the decree of the District Court, permanently enjoining the Railway as well as the Brotherhood from use of the illegal contract or any other similar discriminatory practice denying respondents' job rights because of race or color, and in requiring both Railway and Brotherhood to respond in incidental damages.

Accordingly, the petition should be denied.

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JUL 5 1956
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 231

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN AND MAJOR THREAT, ET AL., FOR AND ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
Petitioners,

vs.

CENTRAL OF GEORGIA RAILWAY,
Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statement	2
Reason For Granting the Writ	4
I. The Court Below Has Decided an Important Federal Question in a Way in Conflict With Applicable Decisions of This Court	4
A. The Federal Equity Rule on Limitations	4
B. The Doctrine of Laches	8
Conclusion	10

Table of Cases

Benners v. *First Nat. Bank*, 247 Ala. 74, 22 So. 2d 435	7
Brotherhood of Locomotive Firemen and Enginemen v. *Howard*, 343 U. S. 768	4, 9
Brotherhood of Locomotive Firemen and Enginemen v. *Mitchell*, 190 F. 2d 308, 5 Cir.	3, 4, 6, 7, 9
Central of Georgia Railway Company v. *Odell Jones et al.*, No. 83 at this Term	1
Christopher v. *Brusselback*, 302 U. S. 500	5
Czaplicki v. *The Vessel S. S. Hoegh Silvercloud*, No. 342, October Term, 1955, dec. June 11, 1956	8
Gardner v. *Panama R. Co.*, 342 U. S. 29	4, 8
Graham v. *Brotherhood*, 338 U. S. 232, 239	3, 6
Holmberg v. *Armbrecht*, 327 U. S. 392	4, 7, 9
Jacksonville Paper Co. v. *Tobin*, 206 F. 2d 333, 334-5	7, 8
McComb v. *Jacksonville Paper Co.*, 336 U. S. 187	7
Rolax v. *Atlantic Coast Line R. Co.*, 4 Cir., 186 F. 2d 473	4
Russell v. *Todd*, 309 U. S. 280, 285	5
Steele v. *Louisville & N. R. Co.*, 323 U. S. 192, 207	3, 6
Syres v. *Oil Workers International Union*, 350 U. S. 892 reversing 5 Cir., 223 F. 2d 739	4

Page
Tunstall v. *Brotherhood*, 323 U. S. 210 3
Virginian Railway Company v. *System Federation No. 40*, 300 U. S. 515 6
Wheeler v. *Greene*, 280 U. S. 49 5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No.

ODELL JONES, DOCK RUTLEDGE, A. C. CAIN AND MAJOR THREAT, ET AL., FOR AND ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,

Petitioners,

vs.

CENTRAL OF GEORGIA RAILWAY,

Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

This is a conditional cross-petition for certiorari. Petitioners, respondents in the petition for certiorari of the *Central of Georgia Railway Company* v. *Odell Jones, et al.*, No. 83 at this Term, pray that a writ of certiorari issue to review that portion of the judgment of the United States Court of Appeals for the Fifth Circuit which limits incidental damages awarded cross-petitioners (plaintiffs) in this equity proceeding to a period subsequent to a date one year prior to the filing of the complaint. *We ask that this cross-petition be granted only if a writ of certiorari be granted upon the petition for certiorari of the Central of Georgia Railway in No. 83 at this Term.* A separate brief has been filed in opposition to that petition.

Opinions Below

The opinion of the District Court appears at page 362 of the Record. The opinion of the Court of Appeals (R. 408) is reported at 229 F. 2d 648. They are printed in Appendix A and B to the petition for certiorari of the Central of Georgia Railway Co., No. 83 at this Term.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was entered on January 31, 1956 (R. 408-415) and a timely petition for rehearing was denied March 9, 1956. The time for filing this cross-petition was extended to July 6, 1956, by order of Mr. Chief Justice Warren, June 4, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

Question Presented

The Brotherhood of Railroad Trainmen, acting as the exclusive bargaining representative of trainmen under the Railway Labor Act, and the Central of Georgia Railway Company, have by express written agreements and practices for a number of years imposed discriminatory employment restrictions upon Negro trainmen. Negro trainmen are banned because of their color from membership in the Brotherhood. Are these Negro trainmen, in obtaining equitable relief, limited to incidental damages for a one year period either as provided by the Alabama Statute of Limitations, or by application of the doctrine of laches?

Statement

Cross-petitioners are colored members of the craft or class of trainmen employed by the Central of Georgia Railway (hereinafter called "Railway"). Cross-petitioners have each established substantial periods of continuous service. They have served either as brakemen in road service or as switchmen in yard service. The Brotherhood of Railroad Trainmen (hereinafter called "Brotherhood"), their

exclusive bargaining representative under the Railway Labor Act, excludes cross-petitioners from membership because of their color.

Prior to institution of these suits, express collective bargaining agreements, conditions of employment and employment practices negotiated between and applied by the Railway and the Brotherhood acting as such representative, deprived cross-petitioners of jobs and employment opportunities. Those jobs and opportunities were thereby made available to white trainmen who were junior to cross-petitioners in continuous service and who were members of the Brotherhood (see pp. 21-28, Petition for Certiorari, No. 83 at this Term).

In this proceeding in equity, the District Court granted an injunction against both the Railway and the Brotherhood forbidding further discrimination against cross-petitioners as trainmen, and providing incidental damages against both in order to make cross-petitioners whole for breach of their statutory rights.

However, believing itself bound by the decision of the Court of Appeals below in *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell*, 190 F. 2d 308, the District Court applied the Alabama one year statute of limitations and limited cross-petitioners' damages to a period subsequent to a date one year prior to the filing of the complaint.

On cross-appeal to the Court below, petitioners presented to that Court the issue of what law of limitations applies to recovery of incidental damages in such a suit as the present one. In affirming the District Court on the merits, the Court of Appeals recognized that such discrimination on account of race as this record discloses is unlawful. It stated that "the law on the substantive question is well established by *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173; *Tunstall* v. *Brotherhood*, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187; *Graham* v. *Brotherhood*, 338

U.S. 232, 70 S. Ct. 14, 94 L. Ed. 22; *Brotherhood of Locomotive Firemen and Enginemen* v. *Howard*, 343 U.S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; *Rolax* v. *Atlantic Coast Line R. Co.*, 4 Cir., 186 F. 2d 473; *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell*, 5 Cir., 190 F. 2d 308. See also *Syres* v. *Oil Workers International Union*, 350 U.S. 892, 76 S. Ct. 152, reversing 5 Cir., 223 F. 2d 739."

But, on the damage issue, it held "as to the question of the time for which damages may be recovered, we approve the limit of one year as fixed by the District Court, and this whether under the statute of limitations or the equitable doctrine of laches. See *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell, supra; Gardner* v. *Panama R. Co.*, 342 U.S. 29, 72, S. Ct. 12, 96 L. Ed. 31."

Reason For Granting the Writ

As stated above, petitioners request consideration of this cross-petition for certiorari only if the Railway's petition for certiorari, seeking review of the substantive portions of the judgment below, is granted. But we likewise respectfully request that the conditional nature of this cross-petition not be considered in diminution of the importance of the questions raised herein. That portion of the decision of the court below relative to the period of limitations is squarely in conflict with the governing decisions of this Court.

The Court Below Has Decided an Important Federal Question in a Way in Conflict With Applicable Decisions of This Court.

A. The Federal Equity Rule on Limitations

Federal courts apply their own principles in the enforcement of equitable rights created by federal statutes. *Holmberg* v. *Armbrecht*, 327 U.S. 392.

The language of the Court in *Holmberg, supra*, at 395, spells that principle out:

"The present case concerns not only a federally-created right but a federal right for which the sole remedy is in equity. *Wheeler* v. *Greene*, 280 U.S. 49, 50 S. Ct. 21, 74 L. Ed. 160; *Christopher* v. *Brusselback*, 302 U.S. 500, 58 S. Ct. 350, 82 L. Ed. 388; *Russell* v. *Todd*, 309 U.S. 280, 285, 60 S. Ct. 527, 84 L. Ed. 754. And so we have the reverse of the situation in *Guaranty Trust Company* v. *York, supra*. We do not have the duty of a federal court, sitting as it were as a court of a State, to approximate as closely as may be state law in order to vindicate without discrimination a right derived solely from a State. We have the duty of federal courts, sitting as national courts throughout the country, to apply their own principles in enforcing an equitable right created by Congress. When Congress leaves to the federal courts the formulation of remedial details, it can hardly expect them to break with historic principles of equity in the enforcement of federally-created equitable rights.

"Traditionally, and for good reasons, statutes of limitations are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellor's intervention, namely, whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair. See *Russell* v. *Todd*, supra (309 U.S. at 289, 84 L. Ed. 761, 60 S. Ct. 527)."

The opinion carefully distinguishes between (1) the exercise of "diversity" jurisdiction in equity "as only another court of the State" and (2) exercise of federal jurisdiction to enforce a federally-created equitable right. In the former, the court attempts to seek out and apply a State statute of limitations; in the latter, the Federal equity court applies its own equitable principles.

The District Court in the present case was on its equity side enforcing an equitable statutory right created by Federal law. Congress formulated that right in the Railway Labor Act, but was silent as to its enforcement. The native and peculiarly appropriate powers of equity accordingly had to be resorted to for enforcement of such rights and the correlative duties required of employers. *Virginian Railway Company* v. *System Federation No. 40*, 300 U.S. 515. This Court made clear that a court of equity will act to remedy a breach of the Brotherhood's statutory duty as bargaining agent in the same manner as equity has enforced the duties of employers. *Steele* v. *Louisville & N. R. Co., supra*, at p. 207; *Graham* v. *Brotherhood, supra*, at p. 239.

The present case is thus one in which relief can only be afforded in equity. Only the exercise of the District Court's traditional equity power through its decree *in personam* could prevent the Railway and Brotherhood from continuing to discriminate against the colored trainmen by applying the unlawful contracts and practices.

The District Court below exercised its equity jurisdiction. However, it felt compelled by *Brotherhood* v. *Mitchell, supra*, to apply the State statute of limitations. It had no duty to do so if the doctrine of *Holmberg* applied, for the District Court was sitting as a court of equity in a case over which its jurisdiction had been invoked to enforce and vindicate a purely Federal statutory right.

In the *Mitchell* case, the United States District Court for the Northern District of Alabama had held (91 F. Sup. 75), correctly we submit, that claims (such as here) for breach of duties accruing in a fiduciary relationship are not ordinarily subject to limitations. By analogy to the Alabama statute of limitations applicable to actions in contract, the District Court there found it equitable to limit incidental

damages to a six year period. Cf. *Benners* v. *First Nat. Bank,* 247 Ala. 74, 22 So. 2d 435.

However, on appeal, the Court of Appeals for the Fifth Circuit held (190 F. 2d 308, 313) "insofar as the suit seeks damages arising out of actions done in violation of . . . [the Brotherhood's obligation to represent the plaintiffs fairly] in the past, plaintiffs are cut off by the Alabama Statute of Limitations from claiming damages sustained more than one year prior to the filing of the suit." The Court cited Alabama cases for the general principle that trusts which arise by implication of law—as distinguished from express or acknowledged trusts—are subject to that limitation.

The Court drew a distinction between time limitations affecting the right to equitable relief by injunction and time limitations upon the right to incidental damages. The opinion did not discuss the principle, there urged by appellees and urged again here, that State laws of limitations do not govern enforcement of rights created by Federal statutes.

The Court below, in adhering to its decision in *Mitchell,* erred in failing to apply the rule in *Holmberg.* Damages awarded in equity and arising from a Federal statute, are no more governed by State laws of limitation than the underlying equitable relief itself. Indeed in *Jacksonville Paper Co.* v. *Tobin,* 206 F. 2d 333, 334-5, this same Court of Appeals below has so held. There, a Florida statute of limitations was urged in bar of an order, incorporated in a contempt judgment, to pay back wages under the Fair Labor Standards Act. Citing *Holmberg,* and applying its doctrine, the Court of Appeals declared:

> "Such state statutes are irrelevant in determining the rules which bar enforcement of an equitable right created by Congress. While the question was not there involved . . . [in *McComb* v. *Jacksonville Paper*

> *Co.*, 336 U.S. 187] the Supreme Court considered the fact that one of the results of the restitution order would be recovery by the employees of the back wages to be immaterial, since the primary purpose of the equitable remedy of civil contempt was a vindication of the court's authority. *This is clear implication that a statute of limitations upon the recovery in a suit for unpaid wages by the employee was not material in the equitable proceeding to require restitution.* Such has been the uniform holding of this and other courts in similar proceedings seeking restitution under the Emergency Price Control Act." (Emphasis supplied)

Like the back wages in *Jacksonville Paper, supra*, cross-petitioners' claim here for wages lost as a result of the Railway's and Brotherhood's wrongdoing, amounts to an "equitable proceeding to require restitution."

All of cross-petitioners' rights are bottomed on Federal law. Clearly, neither the equitable relief nor the damages sought in any way rest upon the law of Alabama.

B. The Doctrine of Laches

In suggesting as an alternate ground for the District Court's decision on the issue of limitations, that the doctrine of laches had some application, the Court below cited only the case of *Gardner* v. *Panama R. Co., supra*. The citation, however, is hardly appropriate for in *Gardner*, this Court explicitly condemned "mechanical application" of state statutes of limitation, pointing out that "the equities of the parties must be considered. . . . Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief."

This Court re-emphasized that aspect of *Gardner* in its recent decision in *Czaplicki* v. *The Vessel S. S. Hoegh Sil-*

vercloud, No. 342, October Term, 1955, decided June 11, 1956, holding state statutes of limitations not controlling on the question of laches in a Federal equity action.

Indeed, the *Holmberg* case, *supra* at 396, itself made clear that the doctrine of laches does not permit mechanical application of state statutes of limitations but rather depends upon "some change in the condition or relations of the property or the parties" which results in "the inequities of permitting the claim to be enforced."

The District Court having erroneously based its action on the state statute of limitations, the court below could not vitiate that error by a belated reference to the doctrine of laches. Nothing in the District Court's action indicates any reliance upon "change" or "inequity". On the contrary, the helplessness of this minority group of Negro employees is manifest throughout the record. It has been spread time and time again upon this Court's pages. The "aggressive" hostility of this very Brotherhood to job rights of these men has been pointedly commented upon in 1952 in *Brotherhood* v. *Howard*, 343 U.S. 768, 771.

Indeed, both of these parties, the Railway and the Brotherhood, executed the patently illegal and discriminatory contract of 1952 after the decision of the Court of Appeals in the *Mitchell* case, *supra*, and in the very teeth of its holding. In the execution of this 1952 agreement between the Brotherhood and the Railway, one of the Railway's principal negotiators, the senior official in charge of personnel, was a continuing member of the Brotherhood while in an executive capacity with the Railway and retained his full seniority as a conductor, flagman, baggagemaster and brakeman on the Railway by virtue of that very contract (R. 305-6). Under these circumstances neither the Railway nor the Brotherhood is in a position to assert that payment of more than one year's damages would have been inequitable.

Conclusion

The Railway is not entitled to a review by writ of certiorari of the judgment below, as pointed out in our separate brief to that effect. If, however, such review is granted, then we urge the Court likewise to grant this cross-petition for certiorari so that a full measure of relief can be granted to these victims of illegal and discriminatory agreements between the Railway and the Brotherhood.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 231.

ODELL JONES, DOCK RUTLEDGE, et al., for and on Behalf of Themselves and Others Similarly Situated,
Petitioners,

vs.

CENTRAL OF GEORGIA RAILWAY COMPANY,
Respondent.

BRIEF

Of Brotherhood of Railroad Trainmen in Opposition to the Cross Petition of Odell Jones, et al., for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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INDEX.

	Page
Foreword	Precedes page 1
Opinions Below	1
Question Presented	2
The Argument	3

Table of Cases.

Brotherhood v. Howard, 343 U. S. 768	3
Brotherhood v. Mitchell, 190 F. 2d 313	3
Cope v. Anderson, 331 U. S. 461	5
Graham v. Brotherhood, 328 U. S. 232	3
Holmberg v. Armbrecht, 327 U. S. 392	3
Steele v. L. & N. R. Co., 323 U. S. 192	3
Tunstall v. Brotherhood, 323 U. S. 210	3

Text Cited.

12 Amer. Jur. 504	5

FOREWORD.

The District Court rendered judgment against both the Brotherhood and the Railway (R. 362 of No. 83). Both appealed to the court below where such judgment was affirmed (229 F. 2d 648).

The Railway alone here sought a writ of certiorari (No. 83).

The cross petition of Odell Jones *et al.* for a writ of certiorari (here No. 231), prays that it be granted only if a writ of certiorari be granted upon the petition of the Railway (No. 83). Such cross petition, if granted, may adversely affect the Brotherhood whom it should have, but omitted to name as a cross respondent.

The cross petition of Odell Jones *et al.*, was not received by counsel for the Brotherhood until September 7, 1956. It contains no certificate of service upon counsel for the Brotherhood as would seem to be required. For that reason this response to such cross petition hereinafter made is just now being filed with the Court.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 231.

ODELL JONES, DOCK RUTLEDGE, et al., for and on Behalf of Themselves and Others Similarly Situated,
Petitioners,

vs.

CENTRAL OF GEORGIA RAILWAY COMPANY,
Respondent.

BRIEF

Of Brotherhood of Railroad Trainmen in Opposition to the Conditional Cross Petition of Odell Jones et al. for the Writ of Certiorari to Review a Judgment of the Court of Appeals for the Fifth Circuit Rendered on January 31, 1956.

OPINIONS BELOW.

The opinion of the District Court appears at page 362 of the record of No. 83. The opinion of the Court of Appeals is reported at 229 F. 2d 648.

QUESTION PRESENTED.

Should the Court deny the petition of the Railway in No. 83, the cross petition of the colored trainmen, by their request, will be dismissed.

Only if the petition of the Railway in No. 83 be granted need the cross petition of Odell Jones et al. (No. 231) and this brief opposing it be considered wherein is presented the sole question of whether incidental damages may be awarded for a period beyond one year prior to the commencement of the litigation in the District Court.

THE ARGUMENT.

Counsel for the colored trainmen, in asserting error in the judgments of the courts below limiting incidental damages "to the period subsequent to a date one year prior to the date of the filing of the complaint" misconceive the nature of the litigation and of the duality of the relief it sought and obtained.

Had the complaint alone sought injunctive relief against the Railway and the Brotherhood we would indeed have been concerned with "equitable rights created by federal statutes," and **Holmberg v. Armbrecht,** 327 U. S. 392, cited and relied on by counsel for the cross petitioners, might be applicable.

But this litigation sought incidental damages and as to that aspect of the complaint we do not deal with equitable rights at all. It is ex delicto. It sounds only in tort since it charges and seeks damages for the breach of a duty imposed on both the carrier and the Union by the Railway Labor Act.

In **Brotherhood of Locomotive Firemen, etc. v. Mitchell,** 190 F. 2d 313 (C. A. 5), upon which, along with **Steele,**[1] **Tunstall,**[2] **Graham**[3] and **Howard,**[4] the decision of the court below is rested, it is said:

> "The Brotherhood alone has appealed.
>
> "Here, attack upon the findings and the judgment takes two forms. The first is the earnest insistence that the action is barred by the Alabama Statute of Limitation of One Year. Citing many Alabama cases and the Oklahoma case of Foster v. Walker, 203 Okl. 3,

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[1] *Steele v. Louisville & N. R. Co.*, 323 U. S. 192.

[2] *Tunstall v. Brotherhood*, 323 U. S. 192.

[3] *Graham v. Brotherhood*, 328 U. S. 232.

[4] *Brotherhood v. Howard*, 343 U. S. 768.

217 P. 2d 533, on the limitation issue, appellant insists that since the suit is not one for an accounting or upon express trust, but one in tort for violation of its obligation as statutory agent of appellees, the suit, though injunctive relief is requested, is in reality a suit at law to which the one year statute applies." * * *

"Appellees' brief, on the issue of limitation, ignores the claim of the suit and the provisions of the decree for damages. It treats the matter before us as involving only the question of appellees' right to equitable relief by injunction. In opposition to the claim that limitation has barred the action, it urges that the obligation of the defendant Brotherhood, as plaintiffs' statutory agent to represent their interests, was continuous; that limitation, therefore, cannot, and has not, run against its claim for injunctive relief compelling the Brotherhood to discharge its statutory obligation to plaintiffs by correcting any injustices it has caused and by avoiding them in future." * * *

"We have given careful consideration to these respective contentions and the authorities cited in the light thrown upon them by the opinion in the Steele case with its full discussion of the true basis and nature of the action.

"We agree with appellees that the obligation imposed by statute upon defendant to fairly represent the plaintiff and to actively negotiate and contract in their interest, is a continuing one, and that, insofar as the suit undertakes, by a claim for injunctive relief in respect of it, to hold the defendants to the performance of that obligation, limitation does not run against it.

"This is bound to be so, because as the right and duty to negotiate is always open, so the right to compel new negotiations to remedy injustice created by, or not dealt within, prior negotiations, is always open.

> "We agree with appellant, however, that insofar as the suit seeks damages arising out of actions done in violation of that obligation in the past, plaintiffs are cut off by the Alabama Statute of Limitations from claiming damages sustained more than one year prior to the filing of the suit." * * *

Suppose this litigation, seeking no injunctive relief, had been by Odell Jones alone to recover damages of the carrier and the Union for wages asserted to have been lost by him through their concerted conspirational violation of the statute.

The applicable period of repose would have been one year based upon Alabama Code, Title 7, Section 26, absent any contrary provision in the Railway Labor Act itself.

As repects the incidental damages and ordered to be ascertained and allowed we are dealing neither with rights arising from a constructive trust nor from an implied contract for as it has been said, "The law will not imply a contract to do a thing merely because a statute imposes a duty to do that thing." 12 Am. Jur., p. 504.

If the limitation on the right to recover incidental damages is not one year, what is it?

While urging that the one year statute cannot apply because we are here concerned with Federal rights created by Federal statutes, counsel does not bother to suggest any other period but leaves that problem wholly in the air.

Surely unlike the injunctive relief, which according to **Mitchell**, brooks of no such containment, there is somewhere some period beyond which these incidental damages may not be sought. The failure of counsel to propose any such period demonstrates the fallacy of their arguments.

In this connection we cite **Cope v. Anderson**, 331 U. S. 461. That litigation was concerned with equitable proceedings brought in the District Courts of Ohio and Penn-

sylvania under 12 U. S. C. A., Sections 63 and 64, to recover assessments on shares of an insolvent national bank.

We point out that the suits were in equity. We point out too that the rights to be vindicated were bottomed upon a Federal statute. Nevertheless, in that case Mr. Justice Black writing for the Court declared:

> "There is no federal statute of limitations fixing the period within which suits must be brought to enforce the statutory double liability of shareholders of insolvent national banks. For this reason we look to Ohio and Pennsylvania law to determine the period in which these suits may be brought. McDonald v. Thompson, 184 U. S. 71, 46 L. ed. 437, 22 S. Ct. 297; McClaine v. Rankin, 197 U. S. 154, 158, 49 L. ed. 702, 704, 25 S. Ct. 410, 3 Ann. Cas. 500; Rawlings v. Ray, 312 U. S. 96, 97, 85 L. ed. 605, 607, 61 S. Ct. 473. Even though these suits are in equity, the states' statutes of limitations apply. For it is only the scope of the relief sought and the multitude of parties sued which give equity concurrent jurisdiction to enforce the legal obligation here asserted. **And equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy.** (Citing cases.)"

The **Cope** decision is a complete answer to the contentions of the cross petitioners.

The conditional cross petition for the writ of certiorari to the court below should be denied (No. 231) irrespective of the action of the Court in No. 83.

Respectfully submitted,

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Certificate of Service.

I, J. K. Jackson, one of the Attorneys for the Brotherhood of Railroad Trainmen, hereby certify that I have served a copy of the above and foregoing brief and argument on William H. Sadler, Jr., and Jerome A. Cooper, Esqs., Attorneys for the other parties to this litigation on this ..... day of September, 1956.

.....
J. K. JACKSON.